

No. 10136

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

*Vol 2341*

*see Vol 2340  
for Vol 1*

J. HOWARD EDGERTON and CLIFFORD W.  
TWOOMBLY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

In Three Volumes

VOLUME II

Pages 473 to 898

---

Upon Appeals from the District Court of the United States  
for the Southern District of California,  
Central Division

**FILED**  
MAY 18 1943

No. 10136

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

J. HOWARD EDGERTON and CLIFFORD W.  
TWOMBLY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Transcript of Record

In Three Volumes

VOLUME II

Pages 473 to 898

---

Upon Appeals from the District Court of the United States  
for the Southern District of California,  
Central Division

(Testimony of Myron W. Reed.)

The Court: I think the objection is sound. Of course I can't tell how important it is, but I think if you have the trust deed, or it is in evidence, maybe you can short-cut by getting a stipulation. But the objection is sound technically.

Mr. Campbell: Yes. [325]

I do not have the trust deed or the note here. The matter is, however, evident in the books and records here in evidence.

The Court: Well, possibly one of these men could show the record to the defendants' counsel so that they might be satisfied with it."

The witness further testified: That on or about the month of March, 1934, I had occasion to enter into an escrow at the Title Guarantee and Trust Company, relative to a note secured by a trust deed on certain property owned by our Company.

"Q. You have produced here a copy of a deed of trust which was entered into on the first day of January, 1933, between Reed Bros., Tapley, Geiger & Company, formerly Reed Bros. Company, herein called trustor, J. L. Smale and J. L. McSwiggen, of Los Angeles, called trustee, and the Railway Mutual Building and Loan Association, *as* corporation, called beneficiary.

Now, is this the deed of trust to which you referred in stating that you received a reconveyance in that escrow? A. Yes, sir."

Q. And did this deed of trust, together with

(Testimony of Myron W. Reed.)

a note as set forth in this deed of trust, represent your obligation as of March, 1934, taking into consideration, however, any reductions of such note by way of payments made in the meanwhile?       A. Yes, sir."

(Thereupon said document was offered and received in evidence, subject to the same objection, same ruling and exception. Said document was marked plaintiff's Exhibit 108, and separately certified pursuant to stipulation and order of Court.)

[326]

The witness further testified: In the course of the escrow, we received from the Title Company plaintiff's Exhibit 109 for identification, a reconveyance of the property as set forth in the Deed of Trust.

(Said document was offered and received in evidence subject to the same objection, same ruling and exception as plaintiff's Exhibit 108, and marked plaintiff's Exhibit 109. Said document was separately certified pursuant to stipulation and order of Court.)

The witness further testified: At the time we entered into this escrow there was owing at that time around \$44,000.00. Plaintiff's Exhibit 99 is an escrow instruction signed by me and filed with the Title Guarantee and Trust Company; Plaintiff's Exhibit 101 bears my signature and is also escrow instructions filed by my Company in connection with the escrow with the Title Guarantee and Trust Company.



(Testimony of Myron W. Reed.)

“Q. Now, Mr. Reed, what was the amount paid or caused to be paid by you for the reconveyance of such deed of trust and the satisfaction of the note?

Mr. Irwin: Pardon me, your Honor. I object to that, may it please the Court, as not the best evidence. I assume counsel is directing the question as to it having been paid upon the First Security. That is why I am pressing the objection.

Mr. Campbell: I will amend the question.

Q. What was the amount paid, or caused to be paid by you into the escrow for the reconveyance of that?

Mr. Irwin: No objection to that, so long as we have our running objection.

The Witness: 22,000, or about that amount.”

The witness further testified: In addition to that we [327] paid small sums of money for expenses in connection with that escrow. I would think the sums of \$35.00 and \$155.00 would be approximately the amounts so paid. We did not pay at any time to any one either in or out of that escrow any further amounts; nor for the reconveyance of that property and the satisfaction of the note which it secured. We received from the escrow the reconveyance and the cancelled note. Prior to entering into this escrow, I had a conversation with Mr. Howard Edgerton; that being so long ago I couldn't tell you when it took place, nor where it

(Testimony of Myron W. Reed.)

was. Prior to this arrangement with this Discount Company we had arrangements with another man by the name of Kenner. As near as I can get it, I had this other proposition and it fell through, and Mr. Edgerton said he thought he could arrange to do the same thing as this other Company; that is about the gist of the conversation. I don't remember of anything being said at that time about the opening of an escrow.

“Q. Mr. Reed, the deed of trust, which you have produced here, is dated January 1, 1933; the reconveyance which you have produced here, which you have testified came to you out of the escrow, is dated March 15, 1934. Now, when was it with reference to either of those dates that you had this conversation with Mr. Edgerton?

A. Well, that is a tough one. I can't remember when it was. Really, I can't, but, of course, it was prior to either one of those, that I had the talk with him.

Q. It was before you borrowed the money from the Railway Mutual Building and Loan Association?

A. Oh, no. It wasn't before that. It couldn't be.”

Q. Now, when was it with relation to those two dates that you had this conversation with Mr. Edgerton?

A. I couldn't tell you. [328]

(Testimony of Myron W. Reed.)

Q. Was it before or after you had borrowed the money as evidenced by this deed of trust?

A. Well, I had made arrangements for that money before the transaction had taken place, of course.

Q. I am referring to this conversation you had with Mr. Edgerton relative to your paying this trust deed off. Was that before or after you entered into the trust deed?

A. It was before I entered into it.

Q. Before you entered into this trust deed with the Railway Mutual?

A. That is to pay off the mortgage you mean? Is that it?

Q. No; I am referring to the conversation where you stated Mr. Edgerton told you that arrangements could be made to take care of your loan.

A. That is right.

Q. By going into this escrow? A. Yes.

Q. Now, when was that conversation had? Do I understand you now that it was before or after you had originally borrowed the money? I am referring to borrowing the money from the Railway Mutual Building and Loan Association.

A. I don't know how to answer it. I had the arrangements all made but I had to have that before I could talk to him about it or before I could go on into escrow, I had to have arrangements made for this money.

(Testimony of Myron W. Reed.)

Q. Yes. Well, were those arrangements made just prior to the time you went into escrow?

A. Yes. I had had arrangements made for that a long time before that.

Q. Do you know how long before you went into escrow?

A. Now, wait a minute. If you would just let me [329] look in my papers. I can tell you about that.

Q. All right.

A. I just gathered up a lot of papers here.

Q. In that connection, let me ask you——

A. Now, here is the agreement with R.F.D. Discount, and it was prior to that.

Q. The witness has produced a document headed, 'Agreement,' dated the 16th of February, 1934.

A. That is right.

Q. Now when was it with reference to this document that the conversation was had?

A. Well, it was quite a while before this, of course, before.

Q. Yes. By 'quite a while,' do you mean a period of months, days, weeks, years?

A. I would say it was probably two or three months before this took place.

Q. Do you have the original of this agreement which you have produced?

A. Well, let's see if I have it. I brought with me everything I could find.

Q. Yes.

A. Pertaining to this case, and I have got it

(Testimony of Myron W. Reed.)

right in here. This was the contract that I had with——

Q. No; I am referring to this agreement purporting to be between yourself and the R. F. D.

A. If it isn't in here—I have all the papers that we have right here. If it is not in here, we haven't got it."

The witness further testified: This looks to me like this is a copy of it; the original was signed by me as President [330] of our Company; my best recollection is that Mr. H. B. Colwell as President and Mr. M. E. Dickman, as Secretary of the R. F. D. Discount Company signed the Agreement entered into on the 16th day of February, 1934. My best recollection is that the original, or a duplicate original was delivered to the R. F. D. Discount Company.

"Mr. Campbell: I will offer this as plaintiff's Exhibit next in order in evidence.

The Court: It may be received subject to the same objection as to all defendants as to the same ruling as to materiality, as to hearsay and as to being connected up."

(Thereupon said document was received in evidence, marked plaintiff's Exhibit 110, which said document is separately certified pursuant to stipulation and order of Court.)

"Mr. Campbell: At this time I wish to extract this from the file and offer as plaintiff's Exhibit 111, receipt dated March 10, 1934; it purports to be a receipt in re loan No. 129, Reed

(Testimony of Myron W. Reed.)

Bros., Tapley & Geiger, and signed J. Howard Edgerton.

The Court: Same objection as to all defendants; same ruling.”

(Said document was received in evidence and marked plaintiff's Exhibit No. 111, which said exhibit is separately certified pursuant to stipulation and order of Court.) [331]

“Mr. Campbell: At this time, if your Honor please, I wish to read certain exhibits to the jury.

First reading from plaintiff's Exhibit 17.

This is the order of the State Building and Loan Commissioner for the segregation of assets, and reading from Exhibit H, which assets were assigned to the First Security Deposit Corporation, which Exhibit H consists of first deeds of trust to be transferred to the First Security Deposit Corporation, December 28, 1933.

Item 129, Reed Bros., Tapley, Geiger and Company. Following this is a legal description of the property. Loan balance, 2-13-34, \$43,-983.38.

I also refer to plaintiff's Exhibit 108, which is a deed of trust dated January 1, 1933, between Reed Bros., Tapley, Geiger and Company, formerly Reed Bros. Company, a California corporation, herein called trustor, J. L. Smale and J. L. McSwiggen, of Los Angeles, California, hereinafter called trustee, and the Railway Mutual Building and Loan Association,



(Testimony of Myron W. Reed.)

.. a corporation, herein called beneficiary.—I will not read the entire document.

Such deed of trust is dated, for the purposes of securing a promissory note—it is evidenced by a promissory note, said note being Registry No. 129 of even date, executed by trustor to beneficiary for \$45,852.01, which trust deed was executed by Reed Bros., Tapley, Geiger and Company, formerly Reed Bros. Company, a California corporation, by Myron W. Reed, president, by John W. Tapley, secretary.

Reading now from plaintiff's Exhibit 73, which are the minutes of the Special Meeting of the Executive Committee of the First Security Deposit Corporation, March 12, 1934:

‘Present: Messrs. R. W. Starr

E. C. Thomas [332]

J. Howard Edgerton

J. L. Smale

C. E. Perkins

C. E. Berry

A. L. Johnson

Miss Florence A. Long

Absent: Mr. W. Seward Brayton.’

Reading a portion of such minutes appearing on the third page thereof:

‘On motion duly made, seconded, and carried, the following resolution was adopted:

Whereas, The Reed Bros. Loan #129 has been in default on the books of the First

(Testimony of Myron W. Reed.)

Security Deposit Corporation for approximately eight months, and whereby a cash offer has been made to the Realty Deposit Co. in the amount of \$17,800. which will enable the loan to be removed from the company at a cash profit to the Realty Deposit Co. and with a substantial bond profit to the First Security Deposit Corp. and it appearing to the best interests of the corporation that this loan be sold,

Now, Therefore, the Secretary is hereby authorized to continue negotiations and carry out all necessary procedure for the purpose of disposing of the Reed Bros. loan for \$17,800, cash consideration, provided, however, that this amount of cash so received shall be used first for the purpose of repaying all bonds that have been borrowed for purpose of consummation of the escrow and the balance transferred to profit account of the Realty Deposit Co.' [333]

The minutes are signed 'R. W. Starr, Chairman, C. E. Perkins, Secretary.'

Reading now from plaintiff's Exhibit 18, the minutes of March 21, 1934, being the minutes of the board of directors of the First Security Deposit Corporation:

(Testimony of Myron W. Reed.)

‘The following directors were present:

Messrs. R. W. Starr

E. C. Thomas

C. E. Berry

C. E. Perkins

A. R. Ireland

Wm. Leffert

W. S. Brayton.

In addition to the directors, the following were present:

Messrs. J. Howard Edgerton

J. L. Smale

Miss Florence A. Long

The Secretary read the minutes of January 17 and February 21, and special meetings of January 10, February 21, and 28, 1934, which were approved as read.

The Secretary also read the minutes of Executive Committee meetings of January 12, 17, 18, 23, 24, 29, 31, February 2, 5, 6, 7, 13, 19, 26, March 3, 5, 6, 12, and 19, 1934, all of which were ratified.’

The minutes bear the signature of Dr. R. W. Starr, Chairman, and C. E. Perkins, Secretary.

Reading now from plaintiff’s Exhibit 21, the minutes of the Board of Control of the Realty Deposit Company for March 12, 1934: [334]

‘The meeting was called to order at 12:30 P.M. by Dr. R. W. Starr, Chairman.

All members of the Board of Control were

(Testimony of Myron W. Reed.)

present, and in addition thereto the following persons were present:

Mr. J. L. Smale

Mr. C. E. Berry

Mr. C. E. Perkins

Mr. A. I. Ireland

Mr. A. L. Johnson

Miss Florence Long.'

I will not at this time refer to the stipulation as to the members of the Board of Control at that time, that having heretofore been read.

'On motion duly made, seconded and carried, the following Resolution was adopted:

Whereas, the Reed Bros. Loan #129 has been in default on the books of the First Security Deposit Corporation for approximately eight months, and whereby a cash offer has been made to the Realty Deposit Co. in the amount of \$17,800.00 which will enable the loan to be removed from the Company at a cash profit to the Realty Deposit Co. and with a substantial bond profit to the First Security Deposit Corporation and it appearing to the best interests of the Corporation that this loan be sold

Now, Therefore, the Secretary is hereby authorized to continue negotiations and carry out all necessary procedure for the purpose of disposing of the Reed Bros loan for \$17,800.00 cash consideration provided, however, that this [335] amount of cash so

(Testimony of Myron W. Reed.)

received shall be used first for the purpose of repaying all bonds that have been borrowed for the purpose of consummation of the escrow and the balance transferred to profit account of the Realty Deposit Co.'

The minutes are signed 'Dr. R. W. Starr, Chairman, J. Howard Edgerton, Secretary.'

I will next read plaintiff's Exhibit 110:

### 'AGREEMENT

WHEREAS, the undersigned, Reed Brothers Co., a corporation, is the owner of the following described real property, to-wit:

The S.E. 14 feet of Lot 6, Subdivision of Lot 4, Block 6, Bell's Addition, as per Map recorded in Book 2, p. 626, Miscellaneous Records of Los Angeles County; the S.E. 65 feet of N.W. 111 feet of Lot 2, Block 6, a portion of Bell's Addition, and the N.W. 46 feet of Lot 2, Block 6, a portion of Bell's Addition, as per Map recorded in Book 32, p. 39, Miscellaneous Records of said County; said property being subject to a deed of trust held by the First Security Deposit Corporation, a corporation, upon which there is an unpaid balance of approximately \$44,000.00; and

Whereas, the undersigned, R.F.D. Discount Company, a corporation, is the owner of certain bonds of the First Security De-

(Testimony of Myron W. Reed.)

posit Corporation, and in a position to exchange said bonds for a reconveyance of said deed of trust,—

Now, therefore, it is mutually convenient and agreed, that in consideration of the sum of Twenty-Two Thousand Dollars (\$22,000.00), said sum [336] to be deposited by said Reed Brothers Co. in escrow, under appropriate escrow instructions, with Title Guarantee & Trust Company, the undersigned R.F.D. Discount Company does hereby agree to deposit in said escrow for the use of said Reed Brothers Co. a reconveyance of said deed of trust.

It is Further Agreed, that when an appropriate reconveyance of the deed of trust has been deposited in escrow to the credit of the Reed Brothers Co., the disposition of said \$22,000.00 shall be disbursed by the R.F.D. Discount Company in any manner it may see fit. The written instructions of C. W. Twombly shall be sufficient authority for the escrow holder to disburse said funds on behalf of the R.F.D. Discount Company, said C. W. Twombly being authorized as the agent of said Discount Company for the purpose of this action to handle the funds herein.

This Agreement shall be performed by all parties within thirty (30) days from date hereof, and may thereafter be terminated



(Testimony of Myron W. Reed.)

at the option of either party by giving five (5) days' written notice to the other.

Dated this 16th day of February, 1934.

Reed Brothers Co., a corporation

By Myron W. Reed, President

J. W. Tapley, Secretary

R. F. D. Discount Company

By H. B. Colwell, President

M. E. Dickman, Secretary.'

The next document I desire to read is plaintiff's Exhibit [337] 111:

'Re: Loan #129—Reed Bros., Tapley, Geiger Co. I, the undersigned, acknowledge receipt of the loan papers covering Reed Bros., Tapley Geiger Co., Loan No. 129.

Note in amount of \$45,852.01.

Deed of Trust dated January 1, 1933, securing same.

Assignment of Deed of Trust, First Security Deposit Corporation to Metropolitan Trust Company of California, unrecorded.

Assignment of Deed of Trust, First Security Deposit Corporation to....., unrecorded.

Beneficiary's Policy of Title Insurance No. 15572.

These papers relate to and cover that portion of Lot 2, Block 6, of Bell's Addition, in the City and County of Los Angeles, State of California, as per Map recorded in

(Testimony of Myron W. Reed.)

Book 2, page 467, Miscellaneous Records of said County, described as follows:

Beginning at a point in the northerly line of Washington Boulevard, formerly Washington Street, distant one hundred eighty-five (185) feet Westerly from the Southeast-erly corner of said lot; thence Westerly along the Northerly line of Washington Boulevard, formerly Washington Street.

(Signed) J. Howard Edgerton.

Dated: March 10, 1934.'

I will next read plaintiff's Exhibit 104, a letter on the letterhead of the First Security Deposit Corporation, Los Angeles, California, March 8, 1934:

'Metropolitan Trust Company  
530 West Sixth Street  
Los Angeles, California [338]

Gentlemen:

Attention: E. L. Robinson, Auditor  
Re: Loan #129—Reed Bros., Tapley, Geiger Co. We desire at this time to exercise our withdrawal privilege under the trust to withdraw Loan #129, amount \$43,983.38, and ask that you execute the enclosed assignment which is made out in blank as to assignee, and also, at this time hand you

(Testimony of Myron W. Reed.)

collateral trust bonds for redemption aggregating \$47,774.47.

Very truly yours,

First Security Deposit Corporation

By (signed) E. C. Thomas

Vice President

By (signed) C. E. Perkins

Secretary-Treasurer.'

Plaintiff's Exhibit 103:

Also on the letterhead of the First Security Deposit Corporation, Los Angeles, California, March 8, 1934:

'Metropolitan Trust Company

530 West Sixth Street

Los Angeles, California

Gentlemen:

We hand you herewith for redemption the following bonds and certificates of the First Security Deposit Corporation:

A-1046	A-1223	A-5103	A-2493	A-6973
1047	1224	5131	2535	7018
1048	1225	5199	6175	7035
1049	1226	5200	6249	7094
1050	1227	5229	6307	3157
1051	1298	2046	6312	3289
1066	1300	2110	6326	3290
1107	1301	2187	6341	3384
1115	1302	2229	6348	3386
1196	1303	2253	6395	8184
1197	1304	2256	6486	8221
1218	1305	2268	6554	8222

[339]

(Testimony of Myron W. Reed.)

1219	1306	2379	6590	8254
1220	1307	2404	6592	
1221	1398	2405	6612	
1222	5101	2479	6656	
			6737	

Very truly yours,

(signed) C. E. PERKINS

C. E. Perkins

Secretary-Treasurer.' '' [340]

“Mr. Campbell: Reading now from the escrow instructions produced here by the Title Guarantee & Trust Company, referring first to plaintiff’s Exhibit 101, addressed:

‘Title Guarantee & Trust Company:

Los Angeles, California,

January 20, 1934.

I will hand you a trust deed and note executed by Reed Bros. Company, a corporation to Inglewood Park Cemetery Association, a corporation, on the following described property.’

Then follows a long property description.

‘Above mentioned trust deed to file to secure a note for \$22,000, dated January 19, 1934, with interest accruing from date of note at the rate of 7 per cent per annum payable at Los Angeles, California; principal and interest payable in monthly installments——’

And so on. Then follows some printed matter which I will not read. Signed ‘Reed Bros. Com-

(Testimony of Myron W. Reed.)

pany, by M. W. Reed, J. W. Tapley, 721 West Washington Boulevard.'

Plaintiff's Exhibit 99, escrow instructions, dated March 12th, 1934, reads as follows:

'Title Guarantee & Trust Company.

PAY \$22,000 net, as demanded for reconveyance of trust deed and release of chattel mortgage. Pay charge for Realty Tax & Service Company's form "B" follow-up service for 10 years.'

There followed instructions here, signed 'Reed Brothers Co., by M. W. Reed.'

Plaintiff's Exhibit No. 95, escrow instructions, addressed to Title Guarantee & Trust Company, Escrow Department, 5th and Hill Streets, Los Angeles, and dated March 10, 1934. [341]

'Escrow instructions in re: Reed Bros. Escrow.

Gentlemen:

We hand you herewith the following described instruments:

1. Promissory note dated January 31, 1933, in the principal amount of \$45,852.01, payable to the Railway Mutual Building & Loan Association, and signed by Reed Bros.-Tapley-Geiger Company.

2. Deed of trust dated January 1, 1933, Reed Bros. Tapley-Geiger Co., trustor, J. L. Smale and J. L. McSwiggen, trustee, the

(Testimony of Myron W. Reed.)

Railway Mutual Building & Loan Association, beneficiary.

3. Assignment of deed of trust from Metropolitan Trust Company to Reed Bros.-Tapley-Geiger Company.

4. Assignment of deed of trust from Metropolitan Trust Company to First Security Deposit Corporation.

5. Assignment of deed of trust in blank from First Security Deposit Corporation.

6. Beneficiary's policy of Title Insurance in the principal amount of \$45,853.00, from National Title Insurance Company, on the following described real property.'

There follows a property description which I shall not read.

'You are authorized to use these in the escrow when you hold for delivery to Mr. C. W. Twombly, the sum of \$22,000 in cash.

Signed R. F. D. DISCOUNT

COMPANY,

a corporation,

By M. E. DICKMAN,

Secretary.' [342]

Mr. Campbell: Plaintiff's Exhibit No. 96:



(Testimony of Myron W. Reed.)

‘To the Guarantee Title & Trust Company,  
Escrow Department,  
Fifth and Hill Streets,  
Los Angeles.  
Escrow Department:

In re: Reed Brothers Escrow—

### SUPPLEMENTAL ESCROW INSTRUCTIONS.

Gentlemen:

On Saturday, March 10, 1934, you were handed a promissory note, a deed of trust, an assignment of deed trust from Metropolitan Trust Co. to Reed Bros., an assignment of deed of trust from Metropolitan Trust Co. to First Security Deposit Corporation, and an assignment of deed of trust in blank from First Security Deposit Corporation.

We herewith hand you a request for a full reconveyance, properly executed by the First Security Deposit Corporation, and you may use the same under the terms and provisions of the Escrow Instructions handed you on March 10, 1934.

We ask that you kindly return to bearer the assignment of deed of trust in blank which has been heretofore handed you, as said assignment in blank is of no use to said escrow.

(Testimony of Myron W. Reed.)

Dated this 12th day of March, 1934.

R. F. D. DISCOUNT

COMPANY,

a corporation,

By (Signed) M. E. DICKMAN.'

And on the lower left-hand corner written in pencil are the words: 'Read, March 12, '34. J. H. Edgerton.' [343]

Plaintiff's Exhibit 97, Escrow Instructions dated the 16th day of March, 1933:

'Title Guarantee & Trust Company

Escrow Department

Fifth & Hill Streets,

Los Angeles.

In re: Reed Bros. Escrow

Gentlemen:

We hand you herewith a Grant Deed from The Railway Mutual Building and Loan Association to the First Security Deposit Corporation, a corporation, as to a portion of Lot A, Tract 6618, of a cemetery lot in Valhalla Memorial Park.

We hand you herewith also, a Grant Deed from First Security Deposit Corporation, a corporation, to Reed Bros.-Tapley-Geiger Co., respecting the same lot.

You are authorized to use these instructions in consummating the escrow instructions heretofore given you by the undersigned company.

(Testimony of Myron W. Reed.)

You are also authorized to use the common stock and release of chattel mortgage, heretofore handed you for the purpose of consummating this escrow, in accordance with our instructions heretofore given you. In other words, all of these instruments may be used by you when you hold for delivery to C. W. Twombly the sum of \$22,000.00.

Dated this 16th day of March, 1933.

R. F. D. DISCOUNT  
COMPANY,  
a corporation,  
By M. E. DICKMAN,  
Secretary.' [344]

The next one, Plaintiff's Exhibit 98, upon the letterhead of the First Security Deposit Corporation, Los Angeles, California, March 12, 1934:

'Title Guarantee and Trust Company  
5th and Hill Streets  
Los Angeles, California

Gentlemen:

Re: Reed Bros. Escrow

You have been handed by the R. F. D. Discount Company a promissory note, deed of trust, policy of title insurance, two assignments of deed of trust, and request for full reconveyance.

You are hereby authorized by this corporation to use said instruments in accord-

(Testimony of Myron W. Reed.)

ance with escrow instructions heretofore handed you and to be hereafter handed by the R. F. D. Discount Company, a corporation.

Very truly yours,

FIRST SECURITY  
DEPOSIT COR-  
PORATION

By (Signed) ED. C. THOMAS

Vice President

(Signed) C. E. PERKINS

Secretary-Treasurer.'

PLAINTIFF'S EXHIBIT 109:

'Full Reconveyance

Register No. 35

J. L. Smale and J. L. McSwiggen, Trustees under that certain Deed of Trust executed by Reed Bros.-Tapley-Geiger Co. formerly Reed Bros Co., a California corporation, as Trustor, dated January 1, 1933 and recorded April 13, 1933 in Book 12119, Page 169 of Official Records of Los Angeles County, [345] California, having been duly and legally requested in writing by the owner and holder of the obligation secured by said Deed of Trust, to reconvey and release the whole of the estate derived by said Trustee under said Deed of Trust, in consideration of One Dollar, receipt whereof is hereby acknowledged, Does Hereby

(Testimony of Myron W. Reed.)

Remise, Release, Quitclaim and Reconvey unto the person or persons legally entitled thereto, but without warranty, all the estate, title and interest acquired by said Trustee under the above mentioned Deed of Trust in and to the property therein granted and conveyed.

In Witness Whereof, said J. L. Smale and J. L. McSwiggen, as Trustees, have subscribed their names, this 15th day of March, 1934.

(Signed) J. L. SMALE

J. L. SMALE

(Signed) J. L. McSWIGGEN

J. L. McSWIGGEN

State of California

County of Los Angeles—ss.

On this 15th day of March, 1934, before me, the undersigned, a Notary Public in and for said County, personally appeared J. L. Smale, and J. L. McSwiggen, Trustees, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same as such Trustees.

Witness my hand and official seal.

(Signed) VIVIAN E. HOWATT

Notary Public in and for said County and State.' [346]

(Testimony of Myron W. Reed.)

Plaintiff's Exhibit 102 which is a record of receipts and disbursements of the Title Guarantee and Trust Company, Escrow No. 965985, showing receipt deposited by Reed Bros., Tapley, Geiger and Company, being a check on the First Security National Bank, Figueroa and Adams, to the Title Guarantee and Trust Company, January 23, 1934, in the amount of \$35.00.

Deposited by Inglewood Park Cemetery Association, check on Security First National Bank of Los Angeles, Guarantee office, Title Guarantee and Trust Company, March 19, 1934, in the amount of \$22,000.

Check deposited by Reed Bros. and Company, check on Security First National Bank, Figueroa and Adams Branch, to Title Guarantee and Trust Company, March 20, 1934, in the amount of \$155.00.

Total receipts of \$22,190.

Disbursements to the Title Guarantee and Trust Company on March 26, 1934, \$126.82.

To the Bureau of Street Assessments, March 26, 1934, \$53.12.

Paid to C. W. Twombly, March 26, 1934, \$22,000.

Paid to Reed Bros. Company, March 26, 1934, \$7.56.

Paid to J. L. Smale and J. L. McSwiggen, Trustees, March 26, 1934, \$2.50.

Making a total disbursements of \$22,190.



(Testimony of Myron W. Reed.)

Plaintiff's Exhibit 100 is a check on the Title Guarantee and Trust Company, No. 32591, dated Los Angeles, California, March 26, 1934, Pay to the order to C. W. Twombly, \$22,000, drawn on the Sixth and Spring Street office of the Security First National Bank of Los Angeles, signed Title Guarantee and Trust Company, by E. W.—it is a typical banker's signature, which I cannot decipher, your Honor— [347] vice president and from the escrow funds account.

It is endorsed by C. W. Twombly, with an identification stamp identifying the signature of C. W. Twombly and his second endorsement, C. W. Twombly, and bearing the perforation of March 26, 1934.

Plaintiff's Exhibit 105, a cashier's check, drawn on the Sixth and Spring office of the Security First National Bank of Los Angeles, 1934, No. 171512, 'Pay to the order of J. Howard Edgerton, \$1,000,' signed 'W. B. Colwell, authorized signature,' and endorsed on the rear thereof, 'J. Howard Edgerton,' and showing perforations of March 27, 1934.

Plaintiff's Exhibit 106, cashier's check, drawn on the Sixth and Spring office, Security First National Bank, March 26, 1934, 'Pay to the order of R.F.D. Discount Company, a corporation, \$3,200,' signed, 'W. B. Colwell, authorized signature,' and bearing the endorsement, 'R.F.D. Discount Company, a corpora-

(Testimony of Myron W. Reed.)

tion, M. E. Dickman, secretary,' and bearing the perforation of March 27, 1934.

Plaintiff's Exhibit 107, cashier's check, drawn on the Sixth and Spring office, Security First National Bank of Los Angeles, March 26, 1934, No. 171514, 'Pay to the order of Realty Deposit Company, \$17,800,' signed 'W. B. Colwell, authorized signature, 'bearing on the reverse the deposit stamp, 'Pay to the order of Bank of America National Trust & Savings Association, Realty Deposit Company, and bearing the cancelation perforation of March 27, 1934.

I also wish to read one further exhibit. I wish to read from plaintiff's Exhibit 24, which has heretofore been identified as one of the books and records of the First Security Deposit Corporation, reading an item appearing on page 25 of the journal, and being the first item appearing on such page, the date April 15, 1934, 'Profit and loss on [348] loans receivable, Escrow No. 6, Reed Bros., to transfer loss on sale of Reed Bros. No. 129 to profit and loss account, loss was taken on sale of this property for \$17,800 cash in order to avoid having it become real estate,' and showing the loss of \$26,138.00.

The Court: Were those words 'showing the loss' yours or were they in the book?

Mr. Campbell: No; I was reading an item

(Testimony of Myron W. Reed.)

of the book, the book item is \$26,138 and the odd cents, which I referred to." [349]

Cross Examination of the Witness,

Myron W. Reed,

By Mr. Lawson:

The witness further testified: I don't think the Deed of Trust dated January 1, 1933, plaintiff's Exhibit 108 was a renewal of a previous Deed of Trust. We had another Trust Deed before this one of January 1, 1933, on our property.

"Mr. Campbell: I was going to say I will stipulate that the Reed Bros. Company had had loans over a long period of time from the Railway Mutual Building and Loan, if that will save you time, and then you can develop the amounts if you care to do so.

Mr. Lawson: Then, as I understand, it will be stipulated that this is what we term a renewal deed of trust.

Mr. Campbell: Well, I will stipulate that that replaced a former obligation on the same property, which obligation was owned by the Railway Mutual Building and Loan Association."

The witness further testified: There was no cash advanced to me or to my Company on this renewal deed of trust.

"Q. Do you have records showing the extent to which you were in default under the terms of this deed of trust? On account of interest, principal payment, taxes?

(Testimony of Myron W. Reed.)

A. No, I haven't that record but I know there was a number of months that we hadn't paid—I think we paid interest part of the time and towards the last we didn't pay anything, interest or principal, for the last month or two.

Q. Mr. Reed, in that conversation which you have stated was on or about February of 1934, will you please state now all that you can recall that was said either by you or by Mr. Edgerton, in substance, [350] not the exact words, we don't expect that, but just give us the full conversation as you recall.

A. Well, previous to this I had had an offer to reduce the loan from \$44,000 to \$22,000 by another party, and that party did not fulfill his promise and the contract ran out. I told Mr. Edgerton about it, and he told me that he thought that maybe this new company could do the same thing for us, and I said, 'Well, that is fine.' And we entered into a contract with the same proposal as I had in the first place."

#### Cross Examination

By Mr. Irwin:

The witness further testified: The \$22,000 which we paid into the escrow was borrowed by my Company in turn from Inglewood Park Cemetery Association; they loaned us the \$22,000 and took a trust deed back themselves for repayment against that property.

The witness further testified: That he did not have the note of which the trust deed dated Jan-

(Testimony of Myron W. Reed.)

uary 1, 1933, was given. That the monthly payments required under the note were \$735.00 a month. We were in default for the greater part of that, except for whatever interest we paid for the eight months up until the time of the deal.

“The Court: Now, gentlemen, do you understand this deal? Do you understand what he meant when he said he reduced this \$22,000? (Jury assent).

That is all.”

Thereupon plaintiff read its Exhibit No. 104 to the Jury: [351]

“ ‘Metropolitan Trust Company  
530 West Sixth Street  
Los Angeles, California

Gentlemen:

Attention: E. L. Robinson, Auditor.  
Re: Loan #129—Reed Bros., Tapley,  
Geiger Co. We desire at this time to exercise our withdrawal privilege under the trust to withdraw Loan #129, amount \$43,983.38, and ask that you execute the enclosed assignment which is made out in blank as to assignee, and also, at this time

hand you collateral trust bonds for redemption aggregating \$47,774.47.

Very truly yours,

FIRST SECURITY DEPOSIT  
CORPORATION

by (signed) E. C. THOMAS

Vice President.

by (signed) C. E. PERKINS,

Secretary-Treas.'

Mr. Campbell: It will be stipulated that the \$47,774.47 refers to the face of the collateral trust bonds which were turned over to the Metropolitan Trust Company, and that such amount was turned over to them pursuant to the provisions of the trust agreement which, as of that date, provided that 110 per cent of the book value of any asset withdrawn from the trust must be deposited with the trust deed.

Mr. Lawson: That is right. That explains the difference between the \$47,000 and the \$44,000.

Mr. Campbell: The face principal amount; yes. And the trust agreement provided that 110 per cent of the fact principal amount of the asset withdrawn should be deposited." [352]

Whereupon plaintiff offered in evidence several documents from the files of the records of the Investment Finance Company, which said documents were received in evidence and marked plaintiff's Exhibits 170 to 177 inclusive, over the objection that the same was immaterial, irrelevant and hearsay and an exception noted.



“Mr. Campbell: At this time I wish to read these documents.

# PLAINTIFF'S EXHIBIT 170:

‘November 16th, 1937

Bonds purchased to date:

198 bonds	Face Value \$59,376.74
-----------	------------------------

Certificates: 132

1109 shares Preferred—Par Value \$22,-  
180.00 at approximately \$2.10 per share.

Face Value of Bonds now outstanding:

There are many small items which can be purchased later at approximately eighty cents (80c).

Also, several blocks of bonds due November 1, 1937, which I believe can be purchased when deemed advisable, at approximately eighty cents plus interest accrued to November 1, 1937—on full paid bonds . . .

Such as:

Sidney James Hayball, Re-

dondo Beach .....	\$4,298.55
-------------------	------------

Thomas W. Burt, Long Beach	3,100.00
----------------------------	----------

Martha Crippen, Los Angeles ..	2,000.00
--------------------------------	----------

---

\$9,398.55

Harry Ramsey, 219 South Grand Avenue, Los Angeles, Full paid bond \$200.00—says he will take 80.

There are a few small bonds and certificates of Preferred, which have been lost or destroyed.

One small bond, \$14.83, name husband and wife; [353] former landlady advises husband is in jail and wife in Patton.

You requested that I advise you of the bonds purchased, amount full paid and amount accumulative . . . This information I do not have, but presume Miss Long can furnish same.

C. P. C.'

---

PLAINTIFF'S EXHIBIT No. 171:

December 15, 1937

PURCHASED TO DATE

232 Bonds—Par \$65,569.04 At \$46.036.30.  
144 Certificates of Preferred totalling 1185 shares.

Par Value .....\$23,700.00

C. P. C.

C. P. CRONK.'

---

PLAINTIFF'S EXHIBIT No. 172:

'Jan 18—'38.

SECURITIES PURCHASED TO DATE

Present Statement

254 bonds—Total Face Value \$75,042.74

One month ago

232 bonds—Total Face Value    65,569.04

Increase

22 Bonds

Value \$ 9,473.70

Present Statement 162 Certificates Preferred Stock totaling:

1403 Shares—Pare Value \$28,600.00

One Month Ago: 144 Certificates Preferred Stock totaling:

1185 Shares—Par Value \$23,700.00

Increase of:

18 Certificates—Par Value \$ 4,900.00'

---

PLAINTIFF'S EXHIBIT No. 173:

'January 18th, 1938

Board of Directors [354]

Investment Finance Company

415 South LaBrea Avenue

Los Angeles, California

Gentlemen:

For the purpose of considering the next advisable step in liquidation of Bonds, permit me to express my views—

1. If you should decide to lower the bid, due to readjustment of asset value necessitated by the recent slump in the Real Estate market, I feel confident that many holders who have watched the value of their securities slowly improve, and who are waiting for a slightly higher price, would promptly become interested in negotiating for sale.

2. A raise in price would also bring in

a certain number of securities, though it would confirm in the minds of many who have been waiting for higher prices the advisability of continuing to wait.

3. There are many small items which could be picked up if I were authorized to purchase them as advantageously as possible up to ninety cents or even par on very small ones.

Suggest par up to \$50.00, and ninety cents up to \$100.00. I believe this should perhaps be the first move. I am not concerned that this would complicate matters. To those persons it could be explained the cost of auditing and bookkeeping on these small items is a loss and therefore, though paying a premium, felt it good business in order to reduce overhead.

I might add, in my opinion, if a letter were [355] sent out identical with the one approved by your committee containing a total based at sixty-five cents, it would close a good percentage of those who are waiting.

Yours very truly,  
(Signed) C. L. CRONK  
C. L. CRONK.'

## PLAINTIFF'S EXHIBIT 174:

'Report of C. L. Cronk

March 16, 1938

288 Bonds purchased to date—

Par Value .....\$87,093.96

271 Bonds—last meeting—

Par Value ..... 80,282.54

Increase 17 Bonds .....\$ 7,621.42

195 Certificates Preferred—

1756 Shares—Par Value .....\$35,120.00

187 Certificates Preferred—Last

Meeting 1694 Shares—

Par Value ..... 33,880.00

8 Certificates—

62 shares increase .....\$ 1,240.00

For your information, we have still outstanding 70 Bonds ranging in face value from eighty-seven cents to ten dollars. Approximately ten of these small bonds are either lost or have been destroyed. It is unfortunate that some way cannot be *provided* to issue duplicates for these small items without expense of Indemnity Bond, which is a minimum of \$5.00.

I would recommend purchase of these seventy bonds at price obtainable.

(Signed) C. L. CRONK.

C. L. CRONK.' [356]

PLAINTIFF'S EXHIBIT 175

'April 20th, 1938.

Report on Securities.

Purchase to date:

299 Bonds	Par \$95,598.80
206 Certificates	Par \$37,040.00

Comment:

I feel that we have reached the point where it is advisable to map out a definite, more adaptable and new plan of procedure.

Respectfully submitted,

(Sgd) C. L. CRONK.

C. L. Cronk.'

---

PLAINTIFF'S EXHIBIT 176

'May 18, 1938

Purchased to date:

307 Bonds	Par Value	\$97,031.89
213 Certificates	Preferred—	

Total 1952 shares—Par Value 39,040.00  
Information furnished by Miss Long show outstanding:

104 Bonds ranging from 87c to \$25.00

33 Bonds ranging from \$25.00 to \$50.00

13 Bonds ranging from \$50.00 to \$75.00

16 Bonds ranging from \$75.00 to \$100.00

166 Bonds ranging from 87c to \$100.00

24 Bonds aggregating \$25,578.58 — due



November 1, 1937.

RE: Bond No. A-1514 in the amount of \$2,000.00, due November 1, 1937—held by Martha Crippen—

Have talked with her son, Mr. Bruce, Attorney for Metropolitan Water District and believe I can [357] pick this up Friday morning at 75c.

This, however, is better than we can do on most 1937 maturities, but feel we should purchase 1937's at the best price obtainable.

I think it possible to deal with some of the larger holders in some manner satisfactory to both parties. For instance:

Mr. A has \$10,000.00 in Bonds—

Now, Mr. A, we are anxious to finish this liquidation as soon as possible and I believe I can secure for you 75c in cash on the dollar, or if you would like to exchange for some good mortgages we might be able to negotiate with the First Security Deposit Corporation on this basis at 80c, and if you do not wish to take the mortgages, we can perhaps get the California Federal to take same and issue you 4% certificates.

C. L. C. (Signed)

C. L. Cronk.'

PLAINTIFF'S EXHIBIT No. 177:

C. L. Cronk—Report

October 19, 1938.

Purchased to Date:

380 Bonds—	Par	\$131,289.59
371 Bonds—last report—	Par	127,505.72
9 Increase		\$ 3,783.87
258 Certificates Pfd.—2,568		
shares Par		\$ 51,360.00
<u>247</u> Cert. last report—2,345		
shares Par		46,900.00

---

11 Increase	223 shares	\$ 4,460.00
-------------	------------	-------------

C. F. Crickelair—\$2,128.24—27

shares Preferred.

Finally contacted him personally. Doesn't need money so will hold securities. [358]

Harry H. Burkholder—\$1400.00, \$17.06, \$391.22, and five shares Preferred.

Pearl E. Burkholder—\$1400.00, \$17.07, \$391.22, \$2200.00, \$26.42 and five shares Preferred.

Have gone to 85 with them. Harry Burkholder is represented by Atty. Snyder. Mrs. Burkholder by Atty. Evarts, 604 Van Nuys Bldg. Apparently they have gotten together. Evarts says Mrs. Burkholder doesn't need money but will sell at 90 and I can pick up the bonds at any time. Otherwise, she will hold them. This would mean that we would have to

pay Harry Burkholder 90 also. Shall we pick them up or not. I will call Mr. Edgerton Thursday from downtown for answer.

L. H. Bidleman — \$14,664.82 and 78 shares Preferred.

Have personally advised him that I am finishing my work as quickly as possible. Have given him until November 1st but he is waiting until he returns to Long Beach, Jan. 1st.

Peter C. Clausen, — \$289.69 and seven shares Preferred.

Not at present price—quoted 75.

Rose H. Condley — \$335.51 and four shares Preferred.

Made final call here. . . 80. Says she will talk it over with her son-in-law and let me know.

George O. Evenson — \$800.00 and ten shares Preferred.

Will get this one next week.

C. F. Ganther—\$1180.21 and 10 shares Preferred. Called last Sunday. He is to let me know [359] in a few days.

Harold Johnson, Santa Barbara . . . \$940.49.

Wrote me that he has decided to hold same.

Mrs. A. H. Koch—\$2000.00, \$2305.72 and 54 shares Preferred. Looks favorable allowing 1.00 for 37 maturity. Am to call back next Sunday.

C. B. Nelson—\$6150.00 and 24 shares Preferred. Deal on again through Jeffers. Think will put it over this time.

Tom D. Nelson—\$942.55 and 22 shares Preferred. Domestic trouble—unable to get wife to sign as yet.

Thomas O'Brien—\$2000.00.

Have gone to 85 with him. He is to phone my home the first evening he is not working.

Gussie Parker—\$2896.25 and 27 shares Preferred. Working now at Huntington Hotel, Pasadena. Can make deal as soon as we can contact.

John Patchett — \$236.39 and 3 shares Preferred. Called Sunday. He agreed to bring securities in but his wife backed out. Will have to see them again.

H. L. Raley—says he will be in to see Mr. Edgerton.

This report is rather hurried. I have talked with Mr. Edgerton. Don't know as yet just when I have to be in Washington—perhaps not until December 1st now. There is time enough to make a final drive as far as my work is concerned, on the entire list. I would like to have the new letter approved so that I can start Friday morning.

As mentioned heretofore, would like to pick [360] up the Burkholder securities, though I feel I am being pressed—but, we

should not let that interfere with the smart thing to do, which is, as I see it now, to get in all we can.

Respectfully submitted,  
C. L. CRONK.' [361]

---

Thereupon the court made the following statement:

"The Court: I think the thing is for a lawyer to protect his record and then he can determine that later, but I think we have got the record protected here. If there was any time that I thought it wasn't, I tried to call your attention to it. I might say, in that regard, that when I have said to you the same ruling would apply, I mean that that carries with it the exception that has been running through here."

Thereupon the following proceedings were had:

"Mr. Campbell: There has been prepared during the interval a chart based upon the stipulation which has heretofore read into evidence as to the corporate structure of the First Security Deposit Corporation and the Investment Finance Company, together with the official positions occupied by each of the defendants in those two companies, with the date which they occupied those positions.

The matters set forth there, being identical

with those contained in the stipulation. I ask at this time to have these charts received in evidence as plaintiff's Exhibits next in order, in order that they may remain in the court room.

The Court: There being no objection, they may be received in evidence.

Mr. Irwin: No objection other than the objection that went to the evidence itself. There is no objection to them as exhibits.

Mr. Boller: We make the same objection that has been running right through.

The Court: Yes, the objections made originally [362] when the stipulation was prepared will run through here."

(Said documents were received in evidence and marked plaintiff's Exhibits 178 and 179 respectively. Said Exhibits are separately certified pursuant to stipulation and order of Court.)

---

CLARENCE M. BRUCE,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified further as follows:

"Q. Now I will ask you, Mr. Bruce, if you have examined the books of account of the First Security Deposit Corporation which have heretofore been placed in evidence and which books are as follows: Plaintiff's Exhibit 22, journal



(Testimony of Clarence M. Bruce.)

and check register of the First Security Deposit Corporation; Plaintiff's Exhibit 23, journal and check register of the First Security Deposit Corporation; Plaintiff's Exhibit 24, cash records, check records, journal and bond register of the First Security Deposit Corporation; Plaintiff's Exhibit 25, cash receipt journal of the First Security Deposit Corporation; Plaintiff's Exhibit 26, conversion ledger and bond register of the First Security Deposit Corporation; Plaintiff's Exhibit 27, record of closed accounts, loan repayments of the First Security Deposit Corporation; Plaintiff's Exhibit 28, real estate ledger of the First Security Deposit Corporation; Plaintiff's Exhibit 29, general ledger of the First Security Deposit Corporation; plaintiff's Exhibit 30, general ledger of the Realty Department of the First Security Deposit Corporation; plaintiff's Exhibit 31, a stock ledger of Class A and B preferred, and Class C common stock of the First Security Deposit Corporation; [363] Plaintiff's Exhibit 32, transfer binder for A and B preferred stock and Class C of the First Security Deposit Corporation; and Plaintiff's Exhibit 33, binder of purchase invoices of the Realty Deposit Company between the dates of November 1, 1933, and November 10, 1936, and I will ask you if you have examined each of such exhibits?       A. Yes, I have.

Q. Now, in making such examination have

(Testimony of Clarence M. Bruce.)

you examined the entries made in such books and drawn summaries therefrom?

A. Yes, sir.

Q. And in that connection I will ask you if you have made an examination of such books of the First Security Deposit Corporation for the purpose of ascertaining the number and face amounts of bonds of the First Security Deposit Corporation acquired or required such corporation at large?

A. Yes, sir.

Mr. Irwin: May I make this inquiry, may it please the Court: All these exhibits were received subject to a motion to strike. I just want to be sure, Your Honor, but I won't be delinquent. If I apprehended the Court's ruling, there shouldn't be a motion made at this time to strike any of those exhibits because of any lack of foundation. That all goes at the end of the Government's case. Am I correct in that?

The Court: That is correct. You won't be waiving your right.

Mr. Irwin: That is right. If the foundation has not been laid, wherever the objection so appears, and that it need not be renewed, and the motion need not be made at this time.

[364]

The Court: That is correct. It may be reserved until the end of the Government's case."

The witness further testified: That based upon

(Testimony of Clarence M. Bruce.)

such examinations, I have determined the face amounts of the bonds, that is the principal amount, by years acquired by First Security Deposit Corporation. I have determined the face amount or principal amount of bonds acquired at a discount by such corporation. I have ascertained the amount paid by such corporation for such discounted bonds. I have ascertained the average amount paid for such discounted bonds. I have ascertained from the books and records that you outlined to me, the face or principal amount of bonds received by the First Security Deposit Corporation on loans or escrows. I have ascertained the face amount of bonds paid off at 100% by such corporation. I have also ascertained from such accounts the principal amount of bonds acquired from the Investment Finance Company. I have ascertained which bonds were acquired from Investment Finance Company at cost to Investment Finance Company. I have ascertained the quantity of bonds received by the First Security Deposit Corporation from the Investment Finance Company in exchange for real property. I have ascertained the principal amount of bonds received by the First Security Deposit Corporation in exchange for first trust deeds belonging to the First Security Deposit Corporation. I have ascertained the principal amount of bonds of the First Security Deposit Corporation received by that corporation from the Investment Finance Company and applied on the principal or interest of debts owing to the First Security Deposit Cor-

(Testimony of Clarence M. Bruce.)

poration from the Investment Finance Company. I have ascertained what interest was added to the principal amount of such bonds and credited to the account of Investment Finance Company by First Security Deposit Corporation. I have summarized the figures of each of those accounts by years. [365]

“Q. Will you state by years the principal amount of bonds acquired by First Security Deposit Corporation, segregating those amounts into first, the total face of bonds acquired, the total amount of bonds discounted; first, as to the face, or principal amount; secondly, as to the amount paid for such discounted bonds; thirdly, as to the average rate paid; stating the face amount of bonds received on loans or escrows; stating in addition the bonds paid off by First Security at 100 per cent during the course of such year and during such periods or years as bonds were acquired from the Investment Finance Company; stating the figure or price at which received; stating whether or not they were received in exchange for real estate, in exchange for trust deed, or applied on principal or interest on debts owing from the Investment Finance Company to the First Security Deposit Corporation; and stating in addition thereto any interest added to the face amount of such bonds and allowed to Investment Finance Company.

Mr. Lawson: Your Honor, it is rather a long question to anticipate every part of it.

(Testimony of Clarence M. Bruce.)

There is no objection, of course, to the face amount of the face of the bonds acquired, nor as to the statement of the amount by years. There is an objection to the statement of any amounts acquired at discounts unless the discount is with reference to the market prices. That is a discount below the market prices as alleged in the indictment. The same would apply to the average amount of discounts, unless the average amount of discounts would be those discounts below the market price or prices; not within the issues of the case; it is immaterial.

The Court: Read the question. [366]

(The question referred to was read by the reporter.)

\* \* \* \* \*

Mr. Lawson: The objection is that any statement by this witness or any evidence relative to discounts or any related matters involving discounts is immaterial and incompetent, and not within the issues of this case unless it be shown that the discount or discounts were below the market prices as referred to in the indictment, and particularly on page 4, the third paragraph from the top; that is, unless it be shown that the discount was from the market price, that it has no place within the issues of this place in any Count of the indictment. Any other discount is not alleged as part of any scheme.



(Testimony of Clarence M. Bruce.)

Mr. Campbell: Possibly there is some confusion in the use of the word 'discount.' My use of the word in the question to the witness is as to the difference between the price paid as disclosed by the books and the face amount of the securities, and I will reframe my questions so that that word is eliminated and in connection with the indictment which alleges that the defendants did depress and cause to be depressed the market price of the said securities of the First Security Deposit Corporation so that the defendants might and did acquire the same from the persons intended to be defrauded at prices greatly reduced from the par value thereof.

This evidence is going to the acquisition at a price less than the par value thereof, and not as to the first portion as to their actual depressing or causing to be depressed.

I think that statement will probable clarify [367] the use of the word 'discount' to which counsel's objection is apparently addressed.

\* \* \* \* \*

The Court: Well, may we not take the question as it has been read, which seems to be clear, with the added feature that the discount is the discount below the face of the bonds to which he is referring, and then your objections would be pertinent.

Mr. Irwin: Very, well, I join in the objection of Mr. Lawson, and add the additional



(Testimony of Clarence M. Bruce.)

objection which I made a moment ago, and I likewise wish to add the further objection that it is hearsay as to the defendants, if I didn't mention that before, and no foundation has been laid."

(The following proceedings were had between court and counsel outside the presence of the jury.)

"Mr. Irwin: I am directing my attention to paragraph 3 page 4, directing my attention particularly to the objection as to the immateriality and the lack of foundation. The other objection is hearsay. They require no comment at this time as they go under the regular subject that has come up, properly subject to a motion to strike.

Your Honor will note the phrase there, I respectfully submit that is conjunctive: 'Defendants did depress and cause to be depressed the market price of the said securities of First Security Deposit Corporation so that defendants might and did acquire the same from the persons intended to be defrauded at prices greatly reduced from the par value thereof.'

I submit, your Honor, that we have no evidence, there hasn't been a single item of evidence, tending to support [368] the first part of the conjunctive statement, namely, that they did anything, at any place along the line, to cause these to be depressed.

I submit, therefore, your Honor, that it then

(Testimony of Clarence M. Bruce.)

is immaterial. The mere fact that the bonds had a face value of \$100 and might have been bought for \$40 itself does not tend to prove or disprove any of the issues set forth in that conjunctive allegation.

The Court: That was the thing that I wanted to bring specifically out into the record because of the wording of this indictment and the wording of the question.

It seems to me that there are two necessary phases of proof in that paragraph in the indictment. If it could conveniently be done to put the first in first, that would be all right, but I don't see that there is any particular necessity for it so long as it comes forward before the end of the case.

The first element is 'That the defendants did depress and cause to be depressed the market price of the said securities.' That is the first element.

The second element is they did that 'so that defendants might and did acquire the same from the persons intended to be defrauded at prices greatly reduced from the par value.'

Now, both elements have got to be proven.

You see that 'did' is the element in there. The Government has got to prove that they did because they alleged that they did and this is the proof.

Mr. Irwin: I appreciate that the Court does

(Testimony of Clarence M. Bruce.)

have in mind unless we get that first allegation there—

The Court: That is an important allegation in the indictment, and proof will have to be coming in to [369] connect those two together in order for the Government to make its case, and then if they don't, you can move to strike.

Mr. Irwin: Then the ruling is the question is considered as still being in the record so these objections may not be repeated.

\* \* \* \* \*

Then do I understand, your Honor, that the question is reinstated, as originally stated by Mr. Campbell with the deletion of the phrase 'discount.'

The Court: With the explanation of what he means by that phrase.

Mr. Irwin: That is still before the Court.

The Court: That is right.

Mr. Irwin: And the objections made by Mr. Lawson and myself and Mr. Adams to that question are overruled and exception allowed, subject to the motion to strike.

The Court: That is right. As to all defendants.

Mr. Lawson: I might state my position with reference to that is that the price at which the bonds were acquired must necessarily be below the market price.

The Court: Ultimately they have go to prove that under their indictment there, either

(Testimony of Clarence M. Bruce.)

by direct or other evidence, but there are two elements to this, and this proof is directed to the second element of the third paragraph on page 4 of the indictment.

Mr. Campbell: We are only proving the ultimate fact of the price at which they were acquired by this witness, not what the market price was or should have been.

\* \* \* \* \*

Mr. Irwin: I overlooked one additional point, so that the Court will have it in mind. In connection with [370] the objection of immateriality, that phrase in the indictment is 'So that defendants might and did acquire.' All this testimony is going to show what the First Security acquired as a corporation. I think counsel will agree that this question does not call and will not develop an answer that any of the defendants acquired the shares.

The Court: It says 'directly or through the agency of one or more of said companies and through the agency of companies whose names are to the Grand Jurors unknown.' There is that limitation as to companies.

That objection will also be overruled subject to the same objection and same ruling.

Mr. Irwin: So we won't have to interrupt again, I am anxious to have this come in as coherently as possible, might it be understood that the objection runs to the whole line of testimony and need not be repeated?

(Testimony of Clarence M. Bruce.)

The Court: Yes.

Mr. Campbell: So stipulated.

The Court: Now the question with the explanation and the objection will be re-instated, and you may answer."

Thereupon the question was read and the witness answered the same, "1932, the First Security acquired a total of \$9,548.43 in bonds, all of which were at 100 per cent paid off."

"Q. Mr. Bruce, do you mean by that that the face amount was paid for those bonds?

A. Yes, sir.

Q. Very well. Proceed.

The Court: What do you mean, 'face amount'? Principal amount or principal plus accrued interest?

The Witness: Principal amount.

1933, the First Security acquired a total of \$50,458.79 [371] in face principal amount of bonds. Of this amount, \$25,813.02 was purchased at a discount for which First Security paid \$6,943.33 at an average rate of 27 per cent.

The Court: 27 per cent of what?

The Witness: The first principal amount. Bonds purchased at 100 per cent for that year amounted to \$24,645.77 which is the principal amount without interest. These were matured bonds. They matured at the date they were purchased or prior to that time. 1934, the First Security acquired a total of \$563,696.88

(Testimony of Clarence M. Bruce.)

face principal amount of the bonds. Of this amount \$411,314.32 were at a discount for which they paid \$140,355.60, which is an average rate of 34 per cent. That is the face principal amount. Received on loans or escrow at 100 per cent, \$152,382.56. 1935, they acquired bonds having a face principal amount of \$237,734.34. Of this amount, \$190,715.61 was acquired at a discount for which First Security paid \$79,633.11, which is an average rate of 42 per cent to the face principal amount.

Bonds received on loans or escrow at 100 per cent amounted to \$35,978.92. Bonds paid off at 100 per cent, \$11,039.81.

1936, First Security acquired a total of \$59,168.18 in bonds. Of this amount, \$20,282.07 were at a discount for which they paid \$11,137.31, which is an average rate of 54 per cent, of face amount of the bonds. Received on loans or escrow at 100 per cent, \$1,157.11. Bonds paid off 100 per cent, \$18,972.31.

Received from Investment Finance Company at 100 per cent cent in exchange for real estate, \$18,756.69. Included [372] in the bonds acquired at a discount were bonds having a face value of \$6,495.85 acquired from Investment Finance Company at a cost of \$3,036.79.

Mr. Irwin: And, your Honor, his use of the word 'discount' will be used in the light of counsel's explanation?

The Court: That is my understanding.



(Testimony of Clarence M. Bruce.)

That is the way you are using the term? That is discount below the face principal amount?

The Witness: That is correct.

Mr. Campbell: Q. Proceed.

A. 1937, the First Security acquired bonds leaving a face principal amount of \$49,614.41. Included in this were bonds paid off at one hundred per cent in the amount of \$85.55. Bonds received from the Investment Finance Company at one hundred per cent in exchange for real estate amounted to \$2,754.69. Received from the Investment Finance Company to apply on the debt or interest due First Security in the amount of \$46,774.17. Interest added to these bonds, received from Investment Finance Company was \$6,295.61.

1938, the First Security acquired trust bonds having a face principal amount of \$65,755.33, all of which were acquired from Investment Finance Company as follows: In exchange for first trust deed \$20,206.07; to apply on the debt or interest due First Security \$45,549.26; interest added to the face principal amount of these bonds amounted to \$13,144.43. When I referred to the years 1937 and 1938 to interest added, this was credit given to the Investment Finance Company for these amounts of interest. [373]

1939, total bonds acquired amounted to \$231,672.79. Bonds paid off at one hundred per

(Testimony of Clarence M. Bruce.)

cent amounted to \$131,279.53. Bonds acquired from the Investment Finance Company in exchange for first trust deeds amounted to \$29,790.74. Bonds received from Investment Finance Company to apply on the debt or interest due First Security amounted to \$70,602.52. Interest added to bonds acquired from Investment Finance Company amounted to \$16,777.21. Credit was given to the Investment Finance Company for that amount of interest."

The witness further testified: Bonds were acquired in 1937 and 1938 by the First Security Deposit Corporation other than those acquired from the Investment Finance Company; in 1937 bonds bought in the amount of \$85.55 were paid off 100 per cent; aside from those, there were no other bonds acquired; these were matured bonds. In 1938, no bonds were acquired other than those acquired from the Investment Finance Company.

"Q. And Mr. Bruce, were all bonds acquired from the Investment Finance Company during the period you repeated with the exception of the item \$6,495.00 worth of bonds which you referred to as having been acquired for \$3,000.00 some odd dollars acquired at one hundred per cent plus accrued interest from the Investment Finance Company?

A. Not in all instances, no, sir.

Q. In the course of the year 1939, Mr. Bruce, from your examination of those books

(Testimony of Clarence M. Bruce.)

and records, were all of the bonds of the Investment Finance Company retired or deposits made for such purpose with the Metropolitan Trust Company?

A. Yes, sir. On December 31st, 1939, there was a [374] total—bonds outstanding totalling \$17,891.31 plus accrued interest of \$4,032.17, totalling \$21,923.48, which amount was deposited in the Metropolitan Trust by First Security to cover all outstanding bonds.

Q. Yes. So far as the company's books and records were presented were retired as of the 31st day of December, 1939?

A. That is correct.

Q. Mr. Bruce, will you give us a total of the figures which you gave heretofore from the period November, 1932, to December 31st, 1939?

A. Total face value principal amount to bonds acquired amounted to \$1,267,649.15, of which amount discounted bonds at a face principal amount of \$648,125.02, for which the First Security paid \$238,069.35 for an average rate of 36.7 per cent. That is to say, 36.7 per cent of the face amount of such bonds. Bonds received on bonds, or escrow, at one hundred per cent amounted to \$189,508.59. Bonds were paid off one hundred per cent \$195,571.40. Bonds received from the Investment Finance Company for the following purposes: the cost bonds leaving a principal amount of \$6,495.85 for

(Testimony of Clarence M. Bruce.)

which Security paid Investment \$3,036.79. In exchange for real estate bonds leaving a face principal amount of \$21,511.38. In exchange for First Trust deed bonds leaving a principal amount of \$49,996.81.

Bonds acquired on the debt or interest due First Security, \$162,925.95. Interest added to bonds traded for first trust deeds are applied on the debt or interest due on the debt in the amount of \$36,217.25." [375]

The witness further testified: The total face amount of bonds acquired by First Security in December of 1934 amounted to \$22,504.79; of this amount, discounted bonds had a face principal amount of \$21,332.06; for which the First Security paid \$6,565.42 for an average rate of 31 per cent. Bonds received on loans or escrow 100 per cent amounted to \$1,172.73.

"Mr. Campbell:

Q. Mr. Bruce, have you also examined the books and records of the Investment Finance Company, which have been produced here in evidence, namely, plaintiff's Exhibit 39, being the record of cash receipts and journal for the period from October 5, 1935, to January 1, 1936, of the Investment Finance Company; Exhibit No. 40, the general ledger of the Investment Finance Company; Exhibit 41, also the general ledger of the Investment Finance Company; Exhibit 42, being the cash journal, check, security, and sales record of the Investment Fi-

(Testimony of Clarence M. Bruce.)

nance Company for the period from January 1st, 1936; Exhibit 43, the cash, check and journal record of the Investment Finance Company for the period from January 1st, 1940, to August 31, 1940; and Exhibit 45, being purchase order records of the Investment Finance Company?      A. Yes.

Q. In that connection have you examined the entries made in such books and drawn summaries therefrom?      A. Yes.

Mr. Irwin: I don't think I made it clear, your Honor. If this is a different company, may we have the same understanding as to what I referred to as the First Security?

The Court: Same objection as to all defendants; same ruling; same exception." [376]

The witness further testified: That in connection with such examination, he examined such books and such entries for the purpose of ascertaining the quantities and the times that bonds of the First Security Deposit Corporation were acquired by Investment Finance Company. I ascertained the date and face amount of the bonds so acquired. By face amount I refer to principal amount. I ascertained the amount paid by Investment Finance Company for such bonds. I ascertained the average rate paid by Investment Finance Company, that is, the percentage of the amount paid to the principal amount of such bonds. I ascertained the disposition of such bonds by the Investment Finance Company after



(Testimony of Clarence M. Bruce.)

their acquisition. I ascertained from such examination whether or not interest upon the principal amount of such bonds was received by Investment Finance Company from First Security Deposit Corporation. I ascertained the total amounts of bonds turned over to First Security Deposit Corporation by Investment Finance Company; and ascertained the costs to Investment Finance Company of the bonds turned over to First Security Deposit Corporation. I ascertained the application of such bonds, whether they were exchanged for real estate, exchanged for first trust deeds owned by First Security Deposit Corporation, or applied on principal or interest on debts owing from the Investment Finance Company to the First Security Deposit Company. I ascertained the total paid or allowed the Investment Finance Company by the First Security Deposit Corporation on account of bonds applied on principal or interest, or exchange for assets.

“Q. Mr. Bruce, will you state by years the face value of bonds of the First Security Deposit Corporation acquired by the Investment Finance Company; the amount of cash paid therefor by the Investment Finance Company; and the average rate applied; that is to say, the average of the face value for which they were acquired; the amount [377] of interest added thereto while in the possession of Investment Finance Company; stating also the disposition of such bonds by the Investment Finance Com-



(Testimony of Clarence M. Bruce.)

pany, and in such connection stating the face amount of bonds turned over to the First Security Deposit Corporation; stating the cost to Investment Finance Company; the application made of such bonds; and the total paid or allowed Investment Finance Company by First Security Deposit Corporation for such bonds; and state the figures slowly, if you will, so that counsel may follow you.

A. For the year 1935, that is October through December 31——

Q. Pardon me. May I amend my question to also add: Bearing in mind the fact that Investment Finance Company was organized August 30, 1935.

A. 1935. Investment acquired First Security bonds having a face principal amount of \$6,376.75; for which they paid \$3,114.99, for an average rate of 48.8 per cent. No interest was added to these bonds.

They were transferred to First Security as follows: In exchange for real estate, bonds having a face principal amount of \$740.89, bonds sold to First Security, having a face principal amount of \$5,635.86, for which Investment received from First Security \$2,-771.16.

Q. Just at that point, Mr. Bruce, that was the same figure at which Investment Finance Company had purchased those particular bonds?

(Testimony of Clarence M. Bruce.)

A. Yes, that is correct.

Q. You may proceed.

The Court: A cash transaction?

The Witness: Yes.

1936, Investment Finance Company acquired First Security [378] Trust bonds having a face principal amount of \$30,184.78; for which they paid \$19,308.92, for an average rate of 64.3 per cent, interest in the amount of \$1,166.61 was added to these bonds which were transferred to First Security Deposit Corporation for the following purposes: to apply on principal debt or interest on debt due First Security. Bonds having a face principal amount, plus accrued interest, totalling \$8,165.27; bonds in exchange for real estate having a face principal amount of \$20,770.49; bonds having a value of face principal amount plus accrued interest in exchange of First Trust deeds in the amount of \$1,549.64; bonds transferred to First Security at cost having a face principal amount of \$859.99, which bonds cost Investment Finance Company \$265.63. The total that was paid to Investment or credited to Investment for all bonds turned over during the year 1936 was \$30,751.03. 1937: Investment acquired First Security bonds having a face principal amount of \$100,238.29; for which they paid \$71,015.43 for an average rate of 70.8.

Interest in the amount of \$17,980.28 was

(Testimony of Clarence M. Bruce.)

added to these bonds and they were then transferred to First Security as follows:

To apply on the principal or interest of the debts due First Security, bonds having a face principal amount, plus accrued interest, in the amount of \$9,638.23; and in exchange for first trust deeds, bonds having a face principal amount, plus accrued interest, totalling \$21,-580.34.

The total received by Investment Finance Company from First Security for all bonds transferred in 1937 amounted to \$118,218.57.

[379]

1938. Investment Finance Company acquired First Security trust bonds having a face value of \$92,057.17, for which they paid \$72,810.48, for an average of 79 per cent.

Accrued interest in the amount of \$14,641.51 was added to these bonds, and they were then transferred to First Security for the following purposes: to apply on the principal or interest of the debt due First Security, bonds having a face principal amount, plus accrued interest, totaling \$76,483.06; in exchange for first trust deeds, bonds having a face principal amount, plus accrued interest, value totalling \$30,215.52.

The total received from First Security by Investment Finance Company for 1938 amounted to \$106,698.68 for these bonds.

(Testimony of Clarence M. Bruce.)

1939: Investment Finance Company acquired First Security trust bonds having a face principal amount of \$12,073, for which they paid \$12,755.84, which is the face principal amount, plus interest, for an average rate of 1.056.

After adding interest of \$2,434.85 to such bonds, they were transferred to First Security Deposit Corporation and applied as follows: On the principal amount, or interest due on the debt due First Security, bonds having a face principal amount, plus accrued interest, totaling \$13,671.85.

In exchange for first trust deeds, bonds having a face principal amount, plus accrued interest, totaling \$8.036.

The total received by Investment Finance Company from First Security for all bonds transferred in 1939 amounted to \$14,507.85.

[380]

“Q. Mr. Bruce, with reference to these schedules you have just been giving on the Investment Finance Company and, particularly, with reference to the disposition of bonds received, let me ask you this: If in that connection you are stating the distribution of bonds during the year for which such figure is given without respect to when the particular bond was acquired?

The Witness: The distribution, the figures given relate to the particular year they were

(Testimony of Clarence M. Bruce.)

acquired. The distribution may vary. If I may explain what I mean there. For example, the Investment Finance might purchase, say, in January of 1939 \$500 in bonds. Now, it may be March, April, May, July or August before those bonds went over to First Security, but the figures I gave is the distribution of that \$500 in bonds for January without regard to the date at which they went over.

Q. Will you state, Mr. Bruce, the total face amount of bonds of the First Security Deposit Corporation acquired by the Investment Finance Company during the existence of that company?

A. \$240,929.99.

Q. And what amount of those bonds were purchased at a price less than the face amount thereof?

A. \$232,889.33.

Q. What was the cost to Investment Finance Company of that \$232,889.33 worth of bonds?

A. \$169,672.09."

(Thereupon plaintiff interrupted the examination of said witness to read certain Exhibits to the Jury.) [381]

"Mr. Campbell: I am going to read from the minutes of May 25, 1938, of the Board of directors of the Investment Finance Company, which is taken from plaintiff's Exhibit 36:

'The following directors were present:

(Testimony of Clarence M. Bruce.)

Messrs. R. W. Starr, E. C. Thomas, J. L. Smale, A. R. Ireland, C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton and Mr. C. L. Cronk were present.

On motion of Mr. Smale, seconded by Mr. Thomas and carried, it was resolved that this company pay up to 80 cents on the dollar on First Security Deposit Corporation bonds.

Signed: R. W. Starr, Chairman; C. W. Twombly, secretary.'

Minutes of June 1, 1938, also a portion of plaintiff's Exhibit 36, a minute of the regular meeting of the Board of Directors of Investment Finance Company:

'The following directors were present:

Mr. R. W. Starr

E. C. Thomas

J. L. Smale, and

Alfred R. Ireland,

C. W. Twombly.

In addition to the directors,

Mr. J. H. Edgerton,

Charles L. Cronk were present .

On motion of Mr. Thomas, seconded by Mr. Smale and carried, it was resolved that Mr. Edgerton and Dr. Starr act as a committee to approve purchase of bonds of the First Security Deposit Corporation of not to exceed 85 cents on the dollar.' [382]



(Testimony of Clarence M. Bruce.)

Omitting the rest of the minutes, signed, 'R. W. Starr, Chairman, C. W. Twombly, Secretary.'

From the minutes of July 20, 1938, also a portion of Government's Exhibit 36, regular meeting of the Board of Directors of Investment Finance Company:

'The following directors were present:

Mr. R. W. Starr

E. C. Thomas,

J. L. Smale,

A. R. Ireland,

C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton was present.'

Reading only a portion:

'On motion of Mr. Thomas, seconded by Mr. Smale, and carried, it was resolved that Mr. Cronk's employment be extended for a period of one month.'

Signed, 'R. W. Starr, Chairman, C. W. Twombly, Secretary.' The minutes of October 19, 1938, also from Government's Exhibit 36. Regular meeting of the Board of Directors of the Investment Finance Company, October 19, 1938:

'Messrs. R. W. Starr,

C. W. Twombly

A. R. Ireland,

E. C. Thomas,

J. L. Smale,

(Testimony of Clarence M. Bruce.)

In addition to the directors, Mr. J. H. Edgerton and Florence Long were present.'

Reading only a portion:

'Upon motion of Mr. Thomas, seconded by Mr. Smale, and carried, Mr. Twombly voting no, it was resolved that Mr. Cronk's employment be extended upon the same terms and conditions to and including [383] November 16, 1938, unless terminated sooner by himself.'

I will not read the remaining portion of the minutes. Signed 'R. W. Starr, Chairman; Florence Long, Secretary.'

Q. Now, Mr. Bruce, have you also examined the books and records of the First Security Deposit Corporation with reference to certain transactions relative to a first trust deed in the amount of \$43,983.38 owned by the First Security Deposit Corporation and secured by certain property of Reed Bros., Tapley and Geiger Company?

A. Yes, sir.

Mr. Adams: If your Honor please, there is, of course, and has been an objection made to this entire Reed Bros., Tapley matter which concerns Reed Bros., Tapley and R. F. D. And part of it was made, and part of it was overruled and part of it reserved. And now they are going into that transaction again and may

(Testimony of Clarence M. Bruce.)

those same objections be made as were made previously and the same ruling?

The Court: The objection is considered to be made, and the same ruling.

Mr. Irwin: That is as to all defendants. And may the additional objection that was made at the outset of this testimony with reference to the First Security, be made, when we addressed your Honor at the bench?

The Court: Yes. The same objections may be deemed to have been made and the same ruling. As to all defendants.

Mr. Lawson: My understanding is, your Honor, that this is a continuing objection."

The witness thereupon testified: That he had examined plaintiff's Exhibit 103, a letter addressed to the Metropolitan [384] Trust Company, dated March 8th, 1934, and plaintiff's Exhibit 104, a letter also addressed to the Metropolitan Trust Company; that he has also examined the list of bonds set forth therein. I have ascertained from the books of the First Security Deposit Corporation, by whom such bonds were held as of and immediately prior to the 8th day of March, 1934; that the books and records did not disclose that those bonds at that time or at any time were the property of or standing in the name of the R. F. D. Discount Company, Inc. I found that the total face amount of the bonds referred to in plaintiff's Exhibit 103, was \$47,774.47.

(Testimony of Clarence M. Bruce.)

“Mr. Irwin: I don’t know whether to this particular line I have ever interposed the objection that it is not within the issues of the indictment.

The Court: The objection may be deemed to have been made and overruled subject to being connected up.”

Mr. Lawson: I think it was stated at the time when the matter originally came up—that the difference between the 43,000 plus and the 47,000 plus that was deposited in the trust company represents the additional 10 per cent that was required by the terms of the trust agreement?

Mr. Campbell: Yes, I think we so stipulated, that the company under the terms of the trust agreement to withdraw a security at that time had to deposit in excess of the face amount of that security of bonds for redemption in order to withdraw it.

The Court: That is correct.”

The witness further testified: Referring to the bonds set forth in plaintiff’s Exhibit 103, that bonds having a face principal amount of \$29,336.42 belong to First Security Deposit Corporation; bonds having a face principal amount of \$6,897.90 were on hand as collateral on loans and were held by the First [385] Security Deposit Corporation. Bonds having a face principal amount of \$11,540.15 were borrowed by First Security from outside parties

(Testimony of Clarence M. Bruce.)

to keep the total of \$47,774.47; these were borrowed from the following persons in the following amounts: A. R. Ireland \$2,400; R. W. Starr \$538.41; Aaron L. Johnson or Nell B. Johnson \$242.37, plus \$51.83; A. L. Johnson \$1.20; Catherine B. Terry, or Nell B. Johnson, \$256.55; and Scott W. or R. E. Derrick, \$7918.69. The figures referred to are the face amounts of the bonds borrowed. These bonds subsequently were returned to those parties from whom they were borrowed in the same face amounts. In the instance of Mr. Ireland, a similar amount was returned on April 26th, 1934, in the instance of Dr. Starr, Aaron L. or Nell B. Johnson, or C. B. Terry—bonds were returned on May 3, 1934, and to Scott W. or R. E. Derrick on May 28, 1934. With reference to the \$6,897.90 amount of bonds held as collateral by the First Security, credit was given on the loans in such amount to the individuals who had put up collateral with the Company. This transaction was carried through the division of the First Security Deposit Corporation known as the Realty Deposit Company, and entries set up on the books in connection with this transaction. The entry reflecting a loss of \$26,183.38 on the transaction, and receipt of cash in connection with this transaction of \$17,800.00.

“Mr. Campbell: At this time I wish to read from Government’s Exhibit 36, the minutes of the Investment Finance Company—from the minutes of the Investment Finance Company for November 9, 1936, reading in part:



(Testimony of Clarence M. Bruce.)

‘Special meeting of the Board of Directors of Investment Finance Company. The following directors were present: Messrs. R. W. Starr, J. H. Edgerton, E. C. Thomas, C. W. Twombly, J. L. Smale.

Upon motion of Mr. Thomas, seconded by Mr. Edgerton, and carried, it was resolved as follows: [386]

Whereas, it appears for the best interests of this corporation that substantially all of the assets of the Consolidated Investors, a California Corporation, be purchased by this corporation for a sum not to exceed \$36,000 in cash,

Now, Therefore, Be It Resolved, that the officers of this company be, and they are hereby, authorized to negotiate, enter into all these contracts with respect to, and execute any and all necessary instruments necessary to complete the purchase of substantially all of the assets of the Consolidated Investors, a California corporation, including the following securities:

3,375 shares common stock of the First Security Deposit Corporation;

2,331 shares of Class A preferred stock of the First Security Deposit Corporation with a total par value of \$46,620.00;

827 shares of Class B preferred stock of the First Security Deposit Corporation with a total par value of \$16,540.00;



(Testimony of Clarence M. Bruce.)

209 full-paid income shares of the Railway Federal Savings and Loan Association, with a total par value of \$20,900.00;

Said shares in the amount of \$15,000 being subject to a hypothecation agreement with one F. E. Jones, said hypothecation agreement being guaranteed by R. W. Starr, J. H. Edgerton, A. R. Ireland, E. C. Thomas, F. A. Anderson, and W. S. Brayton.' Omitting the remainder of such minutes, signed 'R. W. Starr, chairman; C. W. Twombly, secretary.' '' [387]

"Mr. Campbell: At the termination of the morning session I had just read from the minutes of the Investment Finance Company directors' meeting of November 9, 1936. At this time I wish to read from the minutes of the Board of Directors of the Investment Finance Company for January 19, 1938, which is a portion of plaintiff's Exhibit 36, reading in part:

'Regular meeting of the Board of Directors of Investment Finance Company, January 19, 1938.

The following directors were present:

Messrs: R. W. Starr,  
E. C. Thomas,  
J. H. Edgerton,  
J. L. Smale,  
T. W. Twombly.

In addition to the directors, Mr. A. R. Ireland was present.'

(Testimony of Clarence M. Bruce.)

Reading only in part:

‘On motion of Mr. Smale, seconded by Mr. Thomas and Terry, it was resolved that Mr. Twombly and Mr. Edgerton placed such value as they saw fit on assets purchased from the Consolidated Investors in order that the segregation values could be determined.’

The minutes are signed by ‘R. W. Starr, Chairman, C. W. Twombly, Secretary.’

Reading now from the minutes of August 17, 1938, a portion of plaintiff’s Exhibit 36:

‘Regular meeting of the Board of Directors of the Investment Finance Company, August 17, 1938.

The following directors were present:

Messrs. R. W. Starr, [388]

E. C. Thomas,

J. L. Smale,

A. R. Ireland,

C. W. Twombly.

In addition to the directors. Mr. J. H. Edgerton was present.’

Reading only in part:

‘On motion of Mr. Thomas, seconded by Mr. Smale, and carried, it was resolved, that the various assets purchased from the Consolidated Investors be individually valued as per the value set opposite each asset on the annexed descriptive valuation list.’

(Testimony of Clarence M. Bruce.)

There is attached to such minutes an exhibit headed, and reading such exhibit in full:

'\$36,000 paid to Consolidated Investors for the following: First Security Deposit Corporation stock, 2,331 shares, Class A preferred, valued at \$4.50 per share, value \$10,489.50; 827 shares, Class B preferred, valued at \$4.50 per share, value \$3,721.50; 3,376 shares common, valued at 5 cents per share, \$168.80.

California Federal Savings & Loan Association, 59 shares, full paid income shares, valued at \$100 per share, value \$5,900.

150 shares full paid income shares valued at \$100 per share, taken over subject to pledge agreement of Consolidated Investors, as per agreement in file 20, F. E. Jones, secured by hypothecation of the following shares of Investment Finance Company stock: Certificate No. 33, 5,000 shares, W. S. Brayton now Mary Starr Brayton; Certificate [389] No. 13, 2,500 shares, R. W. Starr; Certificate No. 25, 5,000 shares, A. R. Ireland; Certificate No. 21, 1,666 shares, J. H. Edgerton; Certificate No. 20, 1,200 shares, F. A. Anderson; Certificate No. 32, 1,160 shares, Ed. C. Thomas.

150 shares showing the value, \$15,015.00.'

Second deeds of trust, listing, but I will not read the names of each one of them, from 15

(Testimony of Clarence M. Bruce.)

deeds of trust being serial numbers 200 to 214, inclusive, and bearing the following values respectively:—Showing a total value for said 15 second deeds of trust of \$720.20. Possibly I had better read this, if the Court please, if counsel desires it. I don't have an aggregate total of the balance due.

The following second deeds of trust:

'No. 200, Riggon, the balance as of December 28, 1936, \$82.45, value, \$10.54;

No. 201, Rictor, balance of December 28, 1936, \$487.92, value \$1.00;

No. 202, Troller McCulloch, balance December 28, 1936, \$323.31, value \$1.00;

No. 203, Adams, balance December 28, 1936, \$1,391.83 value \$250.00;

No. 204, Templin, balance December 28, 1936, \$833.32, value \$1.00;

No. 205, Pettit, balance December 28, 1936, \$1,147.54, value \$1.00;

No. 206, Cassano, balance December 28, 1936, \$404.85, value \$328.09;

No. 207, balance December 28, 1936, \$484.03, value \$1.00;

No. 208, Carly, balance December 28, 1936, \$450.00, value \$154.89; [390]

No. 209, Johnson, balance December 28, 1936, \$176.43, value \$1.00;

No. 210, Hoffman, balance December 28, 1936, \$750.00, value \$1.00;

(Testimony of Clarence M. Bruce.)

No. 211, Zlatin, balance December 28, 1936, \$797.08, value \$1.00;

No. 212, Liggitt, balance December 28, 1936, \$331.39, value \$66.68;

No. 213, Hamo, balance December 28, 1936, \$475.67, value \$1.00;

No. 214, Nielson, balance December 28, 1936, \$357.76, value \$1.00;

Showing the total value of \$36,000.00 for all assets; the minutes of such meeting being signed by R. W. Starr, Chairman, C. W. Twombly, Secretary.

Q. Have you, however, examined the records and documents produced here by the Witness Bundy Colwell, one of the officers of such corporations, which records and documents were heretofore received in evidence?

A. Yes, sir.

Mr. Adams: This goes to a different line of testimony, apparently, your Honor. I think it is a proper place to make the usual objection.

The Court: The same objection; the same ruling as to all defendants." [391]

The witness further testified: That the 2331 shares of A stock and 827 shares of B stock, and 3376 shares of C stock of the First Security Deposit Corporation, 209 shares of California Federal Building and Loan Association, and 15 Second Trust deeds referred to in the minutes of the Investment Finance Company are reflected in the



(Testimony of Clarence M. Bruce.)

books and records of the Investment Finance Company as having been received by it. That I examined the records of the Investment Finance Company to ascertain the consideration paid for such assets and they disclosed the Investment Finance Company paid the sum of \$36,000.00 therefore. These assets were taken onto the books of the Investment Finance Company at the values as set forth in the minutes just read. These assets were acquired by the Investment Finance Company on December 28th 1936. I have heretofore examined plaintiff's Exhibit 72, the invoices of Battelle-Dwyer. I examined the books of the Investment Finance Company as to the certificate numbers of such 2331 shares of A stock. I examined plaintiff's Exhibit 72, the invoices, for the purposes of ascertaining if they included any of the shares of A stock acquired by the Investment Finance Company from the Consolidated Investors.

“Q. Very well. Referring again, Mr. Bruce to plaintiff's Exhibit 72, namely, the invoices of the Battelle-Dwyer Company to R. F. D. Discount Corporation, will you state whether or not there are listed herein, upon such invoices, any of the shares of stock, of Class A stock, which was subsequently turned over by Consolidated Investors, the successors to R. F. D. Discount Corporation, to Investment Finance Company in this transaction?

A. Yes, there are.



(Testimony of Clarence M. Bruce.)

Q. How many of such shares appear upon these invoices set forth in plaintiff's Exhibit 72? [392]

A. 1,646 shares of the A stock of the First Security.

Q. How many shares of B stock, which subsequently were transferred in the conveyance of the assets of Consolidated Investors to Investment Finance Company?

A. 390.

Q. As to the 1,646 shares, I will ask you if you have totaled the price for such 1,646 shares of A stock as contained in plaintiff's exhibit 72.

A. Yes.

Q. What was that price?

Mr. Irwin: Pardon me, your Honor. I think I should interpose an objection at this time, as to that feature it is immaterial.

The Court: Your objection may be received as to all defendants; overruled; same ruling.

Mr. Lawson: May I suggest——

Mr. Irwin: Exception.

Mr. Lawson: ——there is another phase of this question. Frankly, I don't understand the purpose of it. The price that was paid in between these two companies is immaterial so far as I can see, and I object to it on that ground, as not within the issues of this case, and not tending to establish any issue or any fact.

(Testimony of Clarence M. Bruce.)

Mr. Campbell: I will connect that up, your Honor.

The Court: I can see where they are going, I think, and on the promise to connect it up, I will overrule the objection subject to a motion to strike if the obligation isn't fulfilled on behalf of the plaintiff. I think the point is good at the present state of the record. They say they will connect it up, and we will give them the opportunity.

Mr. Lawson: Exception.

The Witness: \$1,327.68." [393]

The witness further testified: The records of the Investment Finance Company disclosed that it paid \$7,407.00 to Consolidated Investors for such 1,646 shares.

"Q. With reference to the B stock, to which you have referred, some 390 shares of the 827 shares sold to the Investment Finance Company, did you compute from plaintiff's Exhibit 72 the price paid therefor by the R. F. D. Discount Company or its successor, the Consolidated Investors? A. Yes.

Mr. Lawson: Same objection, your Honor.

The Court: Yes. The same objection to all this line."

The witness further testified: that the price paid for such 390 shares was \$345.00. The records of the Investment Finance Company disclosed that

(Testimony of Clarence M. Bruce.)

it paid for such 390 shares \$1,755.00. The Investment Finance Company paid to the Consolidated Investors, the successors of the R. F. D. Discount Company, Inc., \$20,900.00 for such 209 shares of California Federal Building and Loan Association stock.

“Mr. Campbell: At this time I wish to read from the minutes of the First Security Deposit Corporation for June 22, 1934, which is a portion of Plaintiff’s Exhibit 18.

‘Minutes of the special meeting of the Board of Directors of the First Security Deposit Corporation, June 22, 1934.

The following directors were present:

Messrs. R. W. Starr,

E. C. Thomas,

C. E. Berry,

A. R. Ireland, [394]

C. E. Perkins.

Absent:

Mr. W. S. Brayton

Mr. William Leffert.

In addition to the directors, Mr. J. Howard Edgerton, legal counsel, was present.’

Reading in part——

Mr. Adams: I don’t know what this is going to refer to. May this be read subject to the same objection made heretofore that it was prior?

(Testimony of Clarence M. Bruce.)

The Court: Same objection; same ruling.

Mr. Campbell: 'On motion of Mr. Berry, seconded by Mr. Ireland, the following resolution was unanimously adopted:

Resolved, that whereas an offer has been made to this corporation by the R. F. D. Discount Company, a corporation, to exchange \$20,300 of the preferred stock, Classes A and B of this corporation, at dollar for dollar par value in return for \$20,300 guarantee capital stock of the Railway Mutual Building and Loan Association, now owned by this corporation; and

Whereas, after investigation by the officers of this corporation, it appears that there is no present market value for the guarantee capital stock of the Railway Mutual Building and Loan Association and it would be to the benefit of this corporation to purchase its own preferred stock, using guarantee capital stock of the Railway Mutual Building and Loan Association as a consideration therefor;

Now, therefore, be it resolved, that the [395] Secretary of this corporation is hereby authorized to purchase \$20,300 of the preferred stock of this corporation, either Class A or B, using the Railway Mutual Building and Loan Association guarantee capital stock as a consideration for the purchase.'

(Testimony of Clarence M. Bruce.)

The minutes are signed by Dr. R. W. Starr, Chairman.

I will read further matter with reference to this:

‘A discussion was held with reference to the above resolution, at which time Mr. Edgerton, legal counsel, pointed out to the Board of Directors that the latest financial statement of the company’s auditors indicated a total surplus of \$27,681.67; that it was the opinion of counsel, as well as the company auditors, that the company could legally purchase its preferred stock with any portion of said surplus it so desired.

It was further the opinion of counsel that there being no present market value for the Railway Mutual Building and Loan Corporation guarantee capital stock, the company would be benefited in retiring as much of its preferred stock as possible by the above method.’

Such minutes being signed, ‘Dr. R. W. Starr, Chairman; C. E. Perkins, Secretary.’ ”

The witness further testified: That the records of the First Security Deposit Corporation disclosed that on August 31, 1934, the 203 shares of the guarantee capital stock of the Railway Mutual Building and Loan Association were exchanged with the R.F.D. Discount Corporation for 750 shares



(Testimony of Clarence M. Bruce.)

of the preferred A stock of the First Security, and 265 shares of the preferred B, totalling 1,015 shares. [396]

“Q. I did not ask you, Mr. Bruce, but I will ask you at this time, was such transaction which you have described, that is to say, where the 203 shares of the Guaranty stock of the Railway Mutual Building and Loan Association was exchanged for 1,015 shares of A and B stock of the First Security Corporation had with the R. F. D. Discount Corporation? That is to say, was the transaction between the First Security Deposit Corporation and the R. F. D. Discount Company?

A. Yes, sir.”

The witness further testified: I examined plaintiff's Exhibit 72 for the purpose of ascertaining whether or not there were contained in the invoices therein, any of the shares of A and B preferred stock, which was subsequently traded by the R. F. D. Discount Corporation to the First Security Deposit Corporation, and my examination disclosed that 467 shares of the A preferred stock were purchased by R. F. D. from Battle-Dwyer and that 40 shares of the B stock had so been purchased, or a total of 507 of the total 1015 subsequently traded. My examination of Exhibit 72 disclosed \$23.45 was paid for the 467 shares of A stock.

“Q. And at what rate per share?



(Testimony of Clarence M. Bruce.)

A. That would be 5 cents for 465 shares and two of the A shares at 10 cents.

Q. And what price was paid for the 40 shares of B stock which were used in such transaction?

A. 5 cents per share, totaling \$2.00."

The witness further testified: That he was unable to ascertain from any of the records where the remaining 508 shares were obtained, or what price was paid therefor. That he was able to ascertain from an examination of the books and records of the First [397] Security Deposit Corporation, and of the Investment Finance Company that 203 shares of guaranteed capital stock of this transaction were the same 203 shares subsequently acquired by the Investment Finance Company for \$20,300.00. The trust deeds acquired by the Investment Finance Company in the final transaction were second trust deeds. I have examined plaintiff's Exhibit 44 of the stock certificate book of the Investment Finance Company to ascertain the original issuance of stock in that corporation; the books reflected such original issuance of stock as follows: 1,000 shares issued to First Security Deposit Corporation; 10 shares to E. C. Thomas; 10 shares to Smale; 10 shares to F. A. Anderson; 10 shares to C. W. Twombly; 100 shares to Mr. Ireland; 10 shares to W. A. Leffert; 10 shares to C. E. Berry; 10 shares to R. W. Starr; and 10 shares to J. Howard Edgerton. The Investment

(Testimony of Clarence M. Bruce.)

Finance Company was incorporated on August 30, 1935.

The witness further testified: That as of August 18, 1937, and thereafter until the dissolution of the corporation, there was outstanding 31,398 shares of the Investment Finance Company. I examined the records as of August 18, 1937, to ascertain whether or not any of the defendants were holders of shares of Investment Finance Company; as of August 18th J. Howard Edgerton—2,109 shares; R. W. Starr—8,422 shares; E. C. Thomas—1,410 shares; Joseph Smale—2,690 shares; A. R. Ireland—6,900 shares; C. W. Twombly—260 shares. The total of these shares is 21,691.

The witness further testified: That he had examined the books and records of the Investment Finance Company for the purpose of ascertaining the funds or property borrowed by it from the First Security Deposit Corporation; and to ascertain the amounts borrowed each month as well as the nature and character of any repayments, and the amount. I have examined such records for the period from organization of the Investment Finance Company to its dissolution in August of 1940. [398]

“Q. Now, will you state, Mr. Bruce, what your examination of the records disclose as to the amount of cash and other property borrowed by the Investment Finance Company from the First Security Deposit Corporation, the amount repaid on account of principal,

(Testimony of Clarence M. Bruce.)

whether in cash or other form of credit, each month, and the balance due, if any, between such corporations at the end of each month?

Mr. Irwin: Your Honor, may I interpose the objection that that is compound, cash or other. In other words, I ask counsel to re-frame it.

Mr. Adams: May I make the regulation objection, your Honor, as this again is another line of testimony. And then may I make the request of the Court that when we pass the point in 1938 as indicated on the chart, I believe 11-21-38, that the jury be again instructed that the loans or repayments and dissolution and all that after that date in '38 are not to be held to bind the defendant Twombly.

The Court: Well, we will have to make that objection at the time it comes up, because I am liable to forget it.

Mr. Adams: However, I will interpose this objection now that we formerly had as to the matter not being material and being hearsay, in competent.

Mr. Butler: I object to all of the testimony on behalf of the defendant Cronk on the ground that it is hearsay.

The Court: The objections will be overruled and the same exception.

Mr. Lawson: Your Honor, may I object on these grounds: There is no objection, of course, to the amounts that were loaned to

(Testimony of Clarence M. Bruce.)

the Investment Finance Company. That is [399] directly within the issues raised by the indictment. But there it stops. It is limited to that. And anything other than that we object to on the grounds it is not within the issues in this case.

The Court: Objection overruled and exception allowed. As to all defendants." [400]

"A. 1935, October, cash borrowed by Investment from First Security, \$20,500., repaid none, balance due, \$20,500.00;

November, cash borrowed from First Security by Investment Finance, \$18,000.00, repaid none, balance due, \$38,500.00;

December, cash borrowed from First Security by Investment Finance, \$17,253.26, repaid none, balance due, \$55,753.26.

Q. I will stop you at that point, and as you come to the end of each year will you recapitulate the total amount of borrowing for the calendar year, and the total amount repaid within each year, as well as stating the balance due at the end of each year?

A. Total for 1935 borrowed, \$55,753.26, repaid none, leaving the balance of \$55,753.26.

1936, January, cash borrowed by Investment Finance, from First Security, \$10,000.00. repaid nothing, balance due \$65,753.26;

February, cash borrowed from First Security, \$3,000.00, cash repaid to First Security

(Testimony of Clarence M. Bruce.)

by Investment Finance, \$3,500.00, balance due \$65,253.26;

March, cash borrowed from First Security, \$2,500.00; repaid none, balance due \$67,753.26;

April, cash borrowed from First Security, \$19,200.00, cash repaid, nothing, balance due, \$86,953.26;

May, cash borrowed from First Security, \$9,700.00, securities of the Railway Building and Loan Association, borrowed from First Security, book value, \$4,440.26; repaid nothing, balance due \$101,093.52;

June, cash borrowed from First Security, \$17,000.00; repaid nothing, balance due, \$118,093.52; [401]

July, cash borrowed, \$10,000.00, repaid nothing, balance due \$128,093.52;

August, cash borrowed, \$11,500.00, cash repaid to First Security on account, \$5,000.00; balance due \$134,593.52;

September, cash borrowed, \$7,000.00, repaid nothing, balance due, \$141,593.52;

October, cash borrowed, \$23,986.11, Home-owners Corporation bonds borrowed, book value, \$16,530.56, repaid nothing, balance due \$182,110.19;

November, cash borrowed, \$9,500.00, repaid nothing, balance due \$191,610.19;

December, cash borrowed, \$8,000.00, repaid nothing, balance due, \$199,610.19.

Recapitulation for the year. Total borrowed



(Testimony of Clarence M. Bruce.)

in cash and other assets are \$152,356.93. Total repaid cash \$8,500.00, balance due \$199,610.19.

1937, January. Cash borrowed, \$11,500.00, repaid nothing, balance due \$211,110.19.

February, nothing borrowed, nothing repaid, same balance.

March, \$11,500.00, cash borrowed, repaid nothing, balance due \$222,610.19.

April, cash borrowed, \$5500.00, repaid nothing, balance due \$228,110.19.

May, 1937. Cash borrowed, \$5,200.00, repaid on account collateral trust bond of the First Security, having a paid principal amount of \$4,500.00, balance due \$228,810.19. Credit was given for the full amount of \$4,500.

Q. In such payments in the future, where bonds or other assets are received and credit given, will you so state the manner in which it was given? [402] That is to say whether it was at full face value or less than face value.

A. June. Cash borrowed \$17,500; repayments with First Security collateral trust bonds, having a face value of \$13,440.40, credit for which was given at the exact face value.

One automobile transferred to First Security to apply on the account at a value of \$850.00; leaving a balance due of \$232,059.79.

July. Cash borrowed, \$8,000; repaid none; balance due, \$240,059.79.

August. Cash borrowed, \$11,500; one first



(Testimony of Clarence M. Bruce.)

trust deed borrowed from First Security on this account, book value, \$1,689.20; repayments with trust bonds of the First Security, plus accrued interest, totaling \$6,364.92; credit for which was given the full face value plus the accrued interest; balance due \$246,884.07.

September. Cash borrowed, \$1500; automobile from First Security, \$297.00; repaid nothing; balance due \$248,681.07.

October. Cash borrowed, \$7,000; repaid with collateral trust bonds \$174.06, which is the face principal amount, plus accrued interest, for which full credit was given; balance due, \$255,507.01.

November. Cash borrowed, \$4,000; repaid with collateral trust bonds, \$7,812.62, which is the face principal amount, plus accrued interest, for which full credit was given; balance due, \$252,694.39.

December. Cash borrowed, \$7,000; repaid cash \$150; repaid collateral trust bonds, \$13,838.88, which was the face principal amount plus accrued interest for which full credit was given, leaving a balance due of \$244,705.51.

Recap for the year: Total cash or other assets borrowed, [403] \$92,186.20; total repayment with cash, trust bonds, or other assets, \$47,090.88; leaving a balance due at the end of the year of \$244,705.51." [404]

The witness further testified: I have examined the checks, plaintiff's Exhibits 55 to 70, issued by

(Testimony of Clarence M. Bruce.)

the Consolidated Investors to its stockholders in distribution of their shares in the dissolution of that corporation. The total amount paid by Consolidated Investors as shown by those checks to the defendant, R. W. Starr was \$8,172.08. The witness' attention was directed to the endorsement on said checks to the Investment Finance Company, and testified, that he examined the books of that Company to ascertain if shares of stock were thereafter issued to the defendant Starr, and ascertained that 8172 shares of stock at the price of \$1.00 each was issued to the defendant Starr; that the shares issued to him were on or about the dates of the checks which have heretofore been placed in evidence. That the defendant Smale received a check of \$3,240.55 from Consolidated Investors and at or about the date of the issuance of such checks, the defendant Smale purchased and received from the Investment Finance Company, as shown by its records, that Company's shares of stock in the amount of 2,440 shares at \$1.00 each. That his examination disclosed that the defendant Ireland upon the dissolution of the Consolidated Investors and its purchase by the Investment Finance Company, received from the Consolidated Investors \$8,427.89; that \$6,450.00 of this amount was paid over to the Investment Finance Company, for which the Investment Finance Company issued 6,450 shares of its stock. That the defendant Thomas received upon the dissolution of the Consolidated Investors \$1,160.93 and paid over to the Invest-

(Testimony of Clarence M. Bruce.)

ment Finance Company \$1,160 and received 1,160 shares of Investment Finance Company stock. That the defendant Edgerton received in the dissolution of the Consolidated Investors, the sum of \$1,859.72; that of this amount, there was paid over to the Investment Finance Company \$1,859.00 in exchange for 1,859 shares of Investment Finance Company stock. That all of such transactions were had at or about the time that is shown by the cancellation date or pricing date of those checks. [405]

The witness further testified: that the balance due from the Investment Finance Company to the First Security Deposit Corporation as of December 31, 1937, was carried upon the books of those companies as an open account; that an examination of the books and records of the two companies disclosed no securities given from the Investment Finance Company to the First Security Deposit to secure such loans. The rate of interest set up for such loans was 3%. The records indicated that they paid 3% interest for First Security owner's loans. The First Security received a periodic payment of that amount actually in cash or other assets.

“By Mr. Campbell:

Q. Now, will you proceed to the year 1938?

A. Before I proceed may I correct the figure I have for the balance of the year November 1937? I misread it. The correct figure is \$251,694.38 and not \$252,694.39.

(Testimony of Clarence M. Bruce.)

January, 1938, cash borrowed, \$2,400; cash repaid, \$297; balance due \$246,808.51.

February, cash borrowed \$2,000; repaid with First Security collateral trust bonds, \$3,772.28, which is the straight principal amount plus accrued interest for which full credit was given; balance due, \$245,026.23.

March, cash borrowed \$6,000; repaid, nothing; balance due \$251,026.23.

April, cash borrowed \$6,000; repaid with collateral trust bonds of First Security, \$14,683.22, which included the face principal amount plus accrued interest for which full credit was given; cash repaid that month \$2,300; balance due, \$240,053.01.

May, cash borrowed, \$7,100; repaid, nothing; balance due, \$247,153.01. [406]

June, cash borrowed, \$7,000; repaid, nothing; balance due, \$254,153.01.

July, cash borrowed, \$5,000; First Trust Deed transferred to First Security to apply on debt, book value \$1,871.53; balance due, \$257,281.48.

August, cash borrowed, \$12,000; repaid with collateral trust bond of First Security, \$16,027.55, which bond includes the face principal amount plus accrued interest, for which full credit was given; balance due, \$253,253.93.

September, cash borrowed, nothing; repaid with collateral trust bond of First Security, \$12,890.12, which is the face principal amount

(Testimony of Clarence M. Bruce.)

plus accrued interest for which full credit was given; balance due, \$240,363.81.

October, cash borrowed, \$21,500; repaid, nothing; balance due, \$261,863.81.

November, cash borrowed, \$6,250; repaid with collateral trust bond of First Security, \$115.60, which was the face principal amount plus accrued interest for which full credit was given; balance due, \$267,998.21.

December, cash borrowed, nothing; repaid with collateral trust bonds of First Security, \$156.11, which was the face principal amount plus accrued interest for which full credit was given; balance due, \$267,842.10.

A recapitulation for the year, cash borrowed, \$75,250; repaid with cash trust bonds and other assets, \$52,113.41, leaving a balance due of \$267,842.10.

1939, January: Cash borrowed, \$6,000; repaid with collateral trust bonds of the First Security, \$169.32, which was the face principal amount plus accrued [407] interest for which full credit was given, leaving a balance due of \$273,672.78.

February, cash borrowed, \$5,000; repaid with collateral trust bonds of the First Security, \$226.86, which was the principal amount plus accrued interest, for which full credit was given; cash adjustment, a payment of 10c, leaving a balance due of \$278,445.82.

March, cash borrowed; nothing; repaid,



(Testimony of Clarence M. Bruce.)

collateral trust bonds of the First Security, \$1,349.26, which was the principal amount plus accrued interest for which full credit was given; balance due, \$277,096.56.

April, cash borrowed, \$7,000; repaid with collateral trust bonds of the First Security, \$74,591.88, which was the principal face amount plus accrued interest for which full credit was given; balance due, \$209,504.68.”

The witness further testified: That in May, 1939, the account was changed from an open account to a notes payable account; and that from that point demand notes were given by the Investment Finance Company to the First Security Deposit Corporation covering the amounts borrowed and the interest rate was changed from 3 to 6% on the notes; that at all times prior to May, 1939, the rate of interest of 3% was paid and received, and from and after May, 1939, until the dissolution of the Investment Finance Company the rate of interest was 6%; that a corresponding notes receivable account was opened up in the books of the First Security.

“Mr. Campbell: Proceed with May.

The Witness: Yes, sir, that is correct.

May, 1939, cash borrowed \$8,000; repaid with collateral trust bonds of the First Security, \$6,074.72, which was the principal amount plus accrued interest [408] for which full credit was given; repaid cash, \$2,600, leaving a balance due of \$208,829.96.



(Testimony of Clarence M. Bruce.)

June, cash borrowed, \$7,000; repaid with First Security collateral trust bond, \$1,039.87, which was the principal amount plus accrued interest for which full credit was given, leaving a balance due of \$214,790.09.

July, real estate transferred from First Security to Investment on notes, \$15,000; repaid with collateral trust bonds of the First Security, \$522.50, which was the principal amount plus accrued interest for which full credit was given; cash repaid, \$5,700, leaving a balance due of \$223,567.59.

August, cash borrowed, nothing; cash repaid \$500; leaving a balance due of \$223,067.59.

September, cash borrowed, \$500; repaid, nothing; balance due \$223,567.59.

October, cash borrowed, \$3,500; repaid with collateral trust bonds of the First Security, \$1.79, which was the principal amount plus accrued interest for which full credit was given, leaving a balance due of \$227,065.80.

November, real estate transferred from First Security Deposit on notes, \$12,900; repaid, nothing; balance due, \$239,965.80.

December. Nothing borrowed; nothing repaid.

Recapitulation for the year: Cash or other assets Acquired on notes and open account up to May 1, \$64,900; repaid with cash or trust bonds, \$92,776.30."

(Testimony of Clarence M. Bruce.)

The witness further testified: That further loans were made during the year 1940, for the months of January and March. They amounted to \$10,000 in January and \$500 in March; that no repayments were made in either month. That the then balance due was \$250,465.80. [409]

The witness further testified: That the total amount of cash or other assets borrowed by the Investment Finance Company from the First Security Corporation amounted to \$450,946.39, and that the total amount of credits received in repayment by cash and other items from the Investment Finance Company by the First Security Deposit Corporation amounted to \$200,480.59, leaving a balance due of \$250,465.80.

“Mr. Campbell: With reference to the payment of interest from the Investment Finance Company to the First Security Deposit Corporation, will you state the dates and amount of interest paid from the Investment Finance Company to the First Security Deposit, and the manner in which paid?

A. December 31, 1936, cash in the amount of \$3,660.36.

By Mr. Campbell:

Q. Your previous testimony was only as to principal repayments, was it not?

A. Yes, sir.

Q. And interest was kept up at all times, was it not?

A. Yes, sir, as far as I know.

(Testimony of Clarence M. Bruce.)

Q. Yes.

A. December 31, 1937, trust bonds in the amount of \$6,978.90, which would be the face amount plus accrued interest with the full values given. December 31, 1938. Collateral trust bonds of the First Security in the amount of \$7,513.94, which was the principal amount plus accrued interest for which full credit was given.

April 30, 1939,, collateral trust bonds of the First Security in the amount of \$2,753.71, which was the principal amount plus accrued interest for which full credit was given.

May 1939, cash in the amount of \$2.16. [410]

July 1939, cash in the amount of \$29.61.

December 1939, cash in the amount of \$8,854.39. The total interest payments by cash or other credits amounted to \$29,793.07."

The witness further testified: That the Railway Federal Building and Loan Association securities in the sum of \$4,440.26 borrowed by the Investment Finance Company from the First Security Deposit Corporation were disposed of on October 17, 1936, by the Investment Finance Company for \$4,983.33; that the profit derived therefrom was \$543.07. The records of the Investment Finance Company shows a disposition of Home Owner's Loan corporation bonds of the same day they were acquired in October, 1936, from the First Security Deposit; that they were made part of a loan at their face value, book value of \$16,530.56, to a third party. I ascertained

(Testimony of Clarence M. Bruce.)

what disposition was made by the Investment Finance Company of the first trust deed, book amount of \$1,689.20, (August, 1937). It was returned to First Security on July 11, 1938, for the figure of \$1,871.53. The car I referred to in September, 1937, which was conveyed by the First Security to the Investment Finance Company, was sold by the Investment Finance Company for \$297.00. I referred to real estate in July, 1939, in the sum of \$15,000 as being conveyed from the First Security to the Investment Finance; this was sold during July of 1939 to A. R. Ireland for \$7,000. I referred to real estate acquired in November of 1939 by the Investment Finance Company, having a book value of \$12,900; that asset was disposed of in the same month to the American Building and Investment Company for \$3,000. The Investment Finance Company was a stockholder in the American Building and Investment Company as of the month of November, 1939, as disclosed by the records of the Investment Finance Company.

The witness further testified: That the particular assets named, Railway Mutual Building and Loan shares, certain [411] bonds of the H. O. L. C., and automobile, were taken from First Security to Investment in just those figures; these figures were reflected on the books of both corporations.

“By Mr. Campbell:

Q. Mr. Bruce, at the termination of the session yesterday you had just finished testifying concerning the lending of cash and securi-

(Testimony of Clarence M. Bruce.)

ties and other property from the First Security Deposit Corporation to the Investment Finance Company, and you had stated what the books showed as to the disposition of assets other than cash received by the Investment Finance Company from the First Security Deposit Corporation. Now, aside from the two items referred to yesterday, that is to say, the real estate acquired at \$15,000 which was conveyed to the Defendant Ireland for the sum of \$7,000, and the real estate acquired for the sum of \$12,900 and which was conveyed to the American Building and Investment Company, a company in which the Investment Finance Company had a stock interest for \$3,000, were any of the assets other than cash received by the Investment Finance Company from the First Security Deposit Corporation disposed of at a loss to the Investment Finance Company?

A. No, sir."

The witness further testified: That he has examined the stock record of the Investment Finance Company (Plaintiff's Exhibit 44); that he has ascertained therefrom the date and number of shares issued by the Investment Finance Company.

"Q. Will you state, Mr. Bruce, from your examination of that record, the certificates of stock issued in the Investment Finance Company, giving the certificate number, the date issued, and stating to whom such certificate was issued? [412]



(Testimony of Clarence M. Bruce.)

A. On October 5, 1935, Certificate No. 1, issued for 1,000 shares to First Security Deposit Corporation.

On the same date, Certificate No. 2 issued for 10 shares to C. W. Twombly.

Same date, Certificate No. 3 was issued for 10 shares to R. W. Starr.

Same date, Certificate No. 4 was issued for 10 shares to J. Howard Edgerton.

On October 8, 1935, Certificate No. 5 was issued for 10 shares to A. R. Ireland.

On June 17, 1936, Certificate No. 6 was issued to E. C. Thomas for 10 shares.

On July 3, 1936, Certificate No. 7 was issued for 10 shares to J. L. Smale.

Same date, Certificate No. 8 was issued for 10 shares to Florence Anderson.

On July 6, 1936 Certificate No. 9 was issued for 10 shares to C. W. Twombly.

July 9, 1936, Certificate No. 10 was issued for 90 shares to A. R. Ireland.

On July 15, 1936, Certificate No. 11 was issued for 10 shares to William Leffert.

Same date, Certificate No. 12, issued for 10 shares to C. E. Berry.

December 29, 1936, Certificate No. 13, issued to R. W. Starr, 2500 shares.

Same date, Certificate No. 14, issued for 4,800 shares to R. W. Starr.

December 30, 1936, Certificate No. 15 for 240 shares issued to C. W. Twombly.



(Testimony of Clarence M. Bruce.)

Same date, Certificate No. 16, 250 shares issued to A. R. Ireland. [413]

Same date, Certificate No. 17, 240 shares issued E. C. Thomas.

December 31, 1936, Certificate No. 18, 240 shares issued to J. Howard Edgerton.

January 11, 1937, Certificate No. 19 for 240 shares issued to R. W. Starr.

January 15, 1937, Certificate No. 20, issued for 1200 shares to Florence Anderson.

Same date, Certificate No. 21 issued for 1,666 shares, J. Howard Edgerton.

January 19, 1937, Certificate No. 22, issued for 2,095 shares to William Leffert.

Same date, Certificate No. 23, issued for 240 shares to J. L. Smale.

April 20, 1937, Certificate No. 24 issued for 5000 shares to W. S. Brayton.

On April 7, 1937, Certificate No. 25 issued for 5000 shares, A. R. Ireland.

On August 18, 1937, Certificate No. 26 issued for 1,450 shares, A. R. Ireland.

Same date, Certificate 27, issued for 139 shares to Florence Anderson.

Same date, Certificate No. 28, issued for 193 shares, J. Howard Edgerton.

Same date, Certificate 29 for 243 shares, issued to William Leffert.

On August 30th—no, August 18, '37, Certificate No. 30 issued for 2,440 shares to J. L. Smale.

(Testimony of Clarence M. Bruce.)

On August 18, 1937, Certificate No. 31 for 872 shares issued to R. W. Starr.

On the same date, Certificate No. 32 for 1,160 shares issued to E. C. Thomas. ]414]

On December 21, 1937, Certificate No. 33 for 5,000 shares to Mary Starr Brayton. Oh, yes, that is correct. It was transferred from 24, from W. S. Brayton to Mary Starr Brayton.

Certificate No. 33 was cancelled on August 14th, 1939, and re-issued as Certificate No. 34, 2,500 shares, to Mary Starr Brayton, Certificate No. 35, 1,250 shares to R. W. Starr, and Certificate No. 36, 1,250 shares to Julia Starr Eckert."

The witness further testified: That as of August 31, 1940, the date of the dissolution of the Investment Finance Company, the stock outstanding was as follows:

"2500 shares in the name of Mary Starr Brayton; 1250 shares, Julia Starr Eckert; 1410 shares, E. C. Thomas; 2690 shares J. L. Smale; 1,349 shares Florence Anderson; 260 shares C. W. Twombly; 6800 shares A. R. Ireland; 2348 shares William Leffert; 10 shares C. E. Berry; 9672 shares R. W. Starr; 2109 shares J. Howard Edgerton, totalling 31,398. And 1000 shares standing in the name of First Security Deposit Corporation."

"Mr. Campbell: I wish to read from the minutes of the First Security Deposit Corporation, plaintiff's Exhibit 18.

(Testimony of Clarence M. Bruce.)

“The regular meeting of the Board of Directors of the First Security Deposit Corporation, May 20, 1936.

The following directors were present:

Messrs. R. W. Starr

E. C. Thomas

A. R. Ireland

William Leffert

W. S. Brayton

C. E. Berry [415]

C. W. Twombly

In addition to the directors, Mr. J. L. Smale and Mr. J. Howard Edgerton were present.’

Reading in part—

‘On motion of Mr. Thomas, seconded by Mr. Leffert, and carried, it was resolved that Mr. Twombly, or in his absence, Dr. Starr, vote the stock owned by this corporation in the Investment Finance Company until such authority be revoked.’

The minutes are signed by R. W. Starr, Chairman, and C. W. Twombly, Secretary.”

The witness further testified: I have examined the records of the Investment Finance Company for the purpose of ascertaining the amount of all bonds turned over from the Investment Finance Company to the First Security Deposit Corporation. I have examined the books and records of the

(Testimony of Clarence M. Bruce.)

First Security for the purpose of ascertaining the reception of such bonds by the First Security; I have also ascertained therefrom the amount of credit given to the Investment Finance Company for such bonds. Bonds were turned over from the Investment Finance Company to the First Security Deposit Corporation for other purposes than payment of the principal and interest of the obligation existing between the two companies. I ascertained whether or not bonds were turned over from the Investment Finance to the First Security for the purchase of trust deeds. The books and records of the Investment Finance Company reflected the acquisition of real estate from the First Security; the books reflected a total of nine parcels which includes the two that were previously testified to; the seven other pieces were acquired by the Finance Company from the First Security between June 1936 and January 1937. The total book value of this real estate as reflected by the books of the First [416] Security Deposit Corporation was \$20,925.90. The consideration paid by the Investment Finance Company to the First Security were collateral trust bonds of the First Security, having a face value in the principal amount of \$21,511.38. Credit was given for such bonds in that face principal amount upon the books of the First Security Deposit Corporation. The books of the Investment Finance reflected the disposition of such real property. This real estate acquired by the Investment Finance was set up upon its book at the cost of the collateral

(Testimony of Clarence M. Bruce.)

trust bonds traded for the real estate. The net total received by the Investment Finance Company in the sale of these seven pieces of property, was \$21,051.50, and reflects a profit according to the books of \$7,223.87.

The witness was asked what the books reflected as to what the cost of such First Security Trust Bonds were to the Investment Finance Company, to which question an objection was made that the cost of the bonds to the Investment Finance Company was wholly immaterial, which objection was overruled and an exception noted; and the witness answered, \$13,827.63.

“Mr. Irwin: I think the point was raised at the outset, that it is understood that there is an objection as to hearsay, I believe on this. \* \* \*

The Court: The objection may be considered to be made on behalf of all defendants to this question, and any future question with regard to these books that they are hearsay, the objection will be overruled; exception allowed; and subject to a motion to strike.”

The witness further testified: That the books and records of the Investment Finance reflected the acquisition of the First Trust deeds from the First Security Deposit. Between the [417] dates of November 1, 1938, and April 24, 1939, the Investment Finance acquired 37 trust deeds according to their books, from First Security.



(Testimony of Clarence M. Bruce.)

“Mr. Campbell: At this time I wish to read from Plaintiff’s Exhibit 36, certain minutes of the Board of Directors of the First Security Deposit Corporation, reading from the regular meeting of the Board of Directors of the First Security Deposit Corporation of November 16, 1938:

‘The following directors were present:

Messrs. R. W. Starr

E. C. Thomas

A. R. Ireland

C. W. Twombly

William Leffert.’

Reading in part: ‘Upon motion of Mr. Thomas, seconded by Mr. Twombly, and carried, the sale of 13 first trust deeds (as listed below) in the sum of \$13,407.62 to the Investment Finance Company for First Security Deposit Corporation collateral trust bonds and interest in the amount of \$13,409.09, the balance to be applied against accounts receivable, was approved: No. 1030, Algiers, No. 1035, Elliott; No. 2099, Foster; No. 2002, Hutton; No. 2005, Jackson, No. 2007, Maly; No. 2004, Moore; No. 2041, Olsen; No. 2001, Sandifur; No. 430, Stark; No. 2003, Swanston; No. 1034, Wixen; and No. 2008, Wright.’

Such minutes being signed ‘R. W. Starr, Chairman.’

Reading from the regular meeting of the Board of Directors of the First Security De-



(Testimony of Clarence M. Bruce.)

posit Corporation of December 21, 1938: [418]

‘The following directors were present:

Messrs. R. W. Starr

A. R. Ireland

E. C. Thomas

William Leffert.

Absent:

Mr. C. W. Twombly.

In addition to the directors Mr. J. H. Edgerton and Miss Florence Long were present.’

Reading in part: ‘On motion of Mr. Thomas, seconded by Mr. Leffert, and carried, the sale of six first trust deeds (as listed below) in sum of \$3,651.47 to the Investment Finance Company for First Security Deposit Corporation collateral trust bonds and interest in the amount of \$3,744, the balance to be applied against accounts receivable, was approved:

No. 82, Simmons; No. 617, David, and No. 766, Citizens Securities Company.’

Minutes being signed by ‘R. W. Starr, Chairman.’

Reading from the minutes of the regular meeting of the board of directors of the First Security Deposit Corporation, meeting of February 15, 1939:

(Testimony of Clarence M. Bruce.)

‘The following directors were present:

Messrs. R. W. Starr

E. C. Thomas

A. R. Ireland

J. L. Smale

William Leffert.

In addition to the directors Mr. J. H. Edgerton and Miss Florence Long were present.’ Reading in part:

Reading from the regular meeting of the board of directors of the First Security Deposit Corporation meeting of January 18, 1939:

“The following directors were present:

“Messrs. R. W. Starr

“A. R. Ireland

“E. C. Thomas

“William Leffert.

“In addition to the directors, Mr. J. H. Edgerton and Miss Florence Long were present.” Reading in part: “On motion of Mr. Ireland, seconded by Mr. Leffert, and carried, the sale of three first trust deeds (as listed below) in the sum of \$3,-651.47 of the Investment Finance Company for First Security Deposit Corporation collateral trust bonds and interest in the amount of \$3,744, the balance to be applied against accounts receivable, was approved:

(Testimony of Clarence M. Bruce.)

“No. 82, Simmons; No. 617, Dovid, and No. 768, Citizens Securities Company.”

Minutes being signed by “R. W. Starr, Chairman.” [419]

‘On motion of Mr. Ireland, seconded by Dr. Starr, and carried, the sale of three first trust deeds (as listed below) in the sum of \$3,251.11 to the Investment Finance Company for first Security Deposit Corporation collateral trust bonds and interest in the amount of \$3,328, the balance to be applied against accounts receivable, was approved: No. 2015, Pritchard; No. 892, Johnson; and No. 624, Brown.’

Such minutes were signed by ‘J. L. Smale, Chairman.’

Regular meeting of the Board of Directors of the First Security Deposit Corporation, meeting of March 15, 1939:

‘The following directors were present:

Messrs. R. W. Starr

J. L. Smale

E. C. Thomas

A. R. Ireland

Willia Leffert

In addition to the directors, Mr. J. H. Edgerton and Miss Florence Long were present.’

Reading in part:

‘On motion of Mr. Ireland, seconded by

(Testimony of Clarence M. Bruce.)

Mr. Thomas, and carried, the sale of 10 first trust deeds as listed below in the sum of \$20,444.73 to the Investment Finance Company for First Security Corporation collateral trust bonds and interest in the amount of \$21,442.00, the balance to be applied against accounts receivable, was approved: No. 600, Bonang; No. 2031; Cugno; No. 2047, Elkridge; 203, Gott; 2040, Hefner; 2042, Johnson; 798, Nicholson; 2028, Wetterer; 2049, Longstreet; and 2048, Barbato.' [420]

The minutes being signed, 'J. R. Smale, Chairman.'

Minutes of regular meeting of Board of Directors of the First Security Deposit Corporation meeting of April 19, 1939:

'The following directors were present:

Messrs. R. W. Starr

J. L. Smale

E. C. Thomas

A. R. Ireland

William Leffert.

In addition to the directors, Mr. J. H. Edgerton and Miss Florence Long were present.' Reading in part:

'On motion of Mr. Leffert, seconded by Mr. Thomas, and carried, the sale of two first trust deeds as listed below in the sum of \$3,093.15 to the Investment Finance

(Testimony of Clarence M. Bruce.)

Company for First Security Deposit Corporation collateral trust bonds and interest in the amount of \$3,672, the balance to be applied against accounts receivable, was approved: No. 122, Boyd, No. 730, Croot.'

The minutes being signed 'J. L. Smale, Chairman.' [421]

The witness further testified: That the records of the Investment Finance Company reflected the acquisition of the Trust Deeds referred to in the minutes from the First Security Deposit. The books reflected a disposition of the Trust Deeds by the Investment Finance Company after their acquisition; two weeks was the longest any such trust deed was held by the Investment Finance Company; they were sold to the California Federal Savings and Loan Association.

"Q. And for what were they sold? That is to say, what was the consideration received?

Mr. Irwin: Pardon me, your Honor. I think this is another name, and I should interpose another objection at this time on the ground of immateriality and not within the issues.

The Court: Objection overruled. The objection is made on behalf of all of the defendants, and overruled, and exception allowed, and subject to a motion to strike if not properly connected up.

The Witness: Sold for cash."

(Testimony of Clarence M. Bruce.)

The witness further testified: That the face value of the trust deeds at the time of their acquisition as reflected by the books was \$54,181.50; that the consideration paid for the trust deeds by the Investment Finance Company were collateral bonds of the First Security; that the face amount of such collateral trust bonds plus accrued interest, was \$54,181.50. That the books of the Investment Finance Company reflected that its cost for such collateral trust bonds was \$38,699.20. That during the time the Investment Finance Company held such first trust deeds prior to their sale to the California Federal Savings and Loan Association, they received on account of such trust deeds \$147.30 to apply on the principal, in advance payments of interest \$18.15, making [422] a total of \$165.45. The amount of cash received by Investment Finance Company from California Federal Savings and Loan for such trust deeds was \$54,016.05. The books and records of the Investment Finance Company reflected a profit to the Investment Finance of \$15,482.30. The trust deeds were set up on the books of the Investment Finance Company at \$54,-181.50.

“The Court: And what do the books of the Investment Finance Company show as the cost of those bonds?

The Witness: \$38,699.20.

The Court: And the difference between that and the price at which they were taken over by First Security less the cash received in the



(Testimony of Clarence M. Bruce.)

meantime, was the item which was placed on the books of Investment Finance as the cost of the property and the difference was carried on profit and loss account; is that correct?

The Witness: Yes, sir, that is correct.

The Court: Now, gentlemen, may it be stipulated, as sometimes counsel quite naturally forgets to say, according to the books that all of the testimony of this witness, if that is the fact—and I shall ask him—he is testifying not as to his opinion but as the books show; is that correct?

The Witness: Yes, sir, that is correct.

The Court: May it be so stipulated, gentlemen?

Mr. Irwin: That we understand him to be so testifying, your Honor?

The Court: Yes, that you understand him to be so testifying."

The witness further testified: From an examination of the books of the Investment Finance Company, I ascertained the total amount of bonds turned over from the Investment Finance Company to the First Security Deposit and applied on the debt, [423] both principal and interest, existing between the two companies, and applied on the purchase of these trust deeds. The face amount of such bonds applied on the principal would be \$39,974.17; the face amount plus accrued interest would be \$46,090.88. The amount of bonds during

(Testimony of Clarence M. Bruce.)

the year 1937, both face amount and accrued interest turned in for credit on account of interest on the obligation during that year was \$6,978.90. The cost of the Investment Finance Company of all such bonds was \$33,012.31.

“Q. Referring to the year 1938, what was the face amount, plus accrued interest if credit was given for accrued interest, of bonds turned over from the Investment Finance Company to the First Security Deposit Corporation for credit on the principal of the debt?

A. \$47,644.88.”

The witness further testified: That the amount of bonds and accrued interest applied on interest on that debt was, \$7,513.94. That \$23,740.94 was the amount of bonds utilized in the purchase of trust deeds. The total of the face amount of bonds plus accrued interest applied on debt, interest and trust deeds amounted to \$49,684.13. The total face value plus accrued interest was \$78,899.76. The cost of the Investment Finance Company of such bonds was \$49,684.13.

The witness further testified: As to the year 1939, the total face and accrued interest of bonds turned over from the Investment Finance Company to the First Security and applied on the principal of the debt was \$83,976.20; the amount applied on interest \$2,753.71; the amount applied on trust deeds, \$30,440.56. That the face value plus aggregate interest of all such bonds was \$117,170.47, to which

(Testimony of Clarence M. Bruce.)

credit was given in that amount. That the cost of such bonds to the Investment Finance Company was \$79,440.80. The face value and accrued interest for which credit was given by [424] the First Security to the Investment Finance for these bonds for the three years amounted to \$249,140.01; the cost to the Investment Finance of all such bonds was \$162,141.24, or a difference of \$86,998.77.

“By Mr. Campbell:

Q. Mr. Bruce, you have also testified concerning bonds which were turned over for real estate in the face amount of \$21,511.38; and you testified yesterday concerning bonds which were turned over at cost to Investment Finance Company? A. Yes.

Q. Bearing those figures in mind as well, what was the total face amount of all bonds turned over from the Investment Finance Company to the First Security Deposit Corporation?

A. \$240,929.99. To that amount accrued interest was added to which credit was given to the Investment Finance of \$36,217.25. The total amount of credit given by First Security to the Investment Finance on account of such bonds and accrued interest was \$277,147.24. The cost of all such bonds to the Investment Finance was \$179,005.66. The difference between such cost and the total amount of credit given is \$94,682.52.”

The witness then stated that he desired to make a correction in his previous figure, and testified

(Testimony of Clarence M. Bruce.)

that concerning the total value of all bonds for which credit was given from the Investment Finance Company to the First Security, the figure should be \$273,688.18.

“Mr. Campbell: At this time, if the Court please, I am going to offer as to the Defendants Edgerton, Twombly, a document bearing date of January 3rd, 1936 and bearing the signatures, ‘Investment Finance Company, by [425] J. H. Edgerton, Vice-president, By C. W. Twombly, Secretary,’ and ‘Pierce Petroleum Corporation, by J. H. Edgerton, President, by C. W. Twombly, Secretary,’ which I am offering on the basis of the signatures and the materiality of the document as will appear to the Court from examination of the document as to these two defendants.

Mr. Adams: To which we object, your Honor, on the grounds formerly stated as to the materiality.

The Court: The objection will be overruled and exception allowed, subject to a motion to strike.”

Mr. Campbell: May I suggest that I take up some other matter during the time that we have and we can take that up later. At this time I wish to read from the minutes of the Investment Finance Company. I am reading from the minutes of the Board of Directors (plaintiff's Exhibit 36) meeting of December 21, 1938.

‘The following Directors were present:

R. W. Starr,

A. R. Ireland,

E. C. Thomas,

J. L. Smale,

Absent:

Mr. C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton and Miss Florence Long were present.’

Reading from such minutes in part:

‘On motion of Mr. Smale, seconded by Mr. Thomas and carried, it was resolved that Mr. Twombly’s resignation as director of this Corporation be accepted.

On motion of Mr. Thomas, seconded by Mr. Smale [426] and carried, it was resolved that Mr. H. Dean Campbell be employed to make an audit of the books of this Company.’

The minutes being signed, ‘R. W. Starr, Chairman.’

Reading from the same Exhibit, the meeting of the Board of Directors of the Investment Finance Company of March 15, 1939:

Mr. Irwin: \* \* \* \* That is a matter I would like to make an objection to and it concerns an exhibit concerning which there is a motion to strike. \* \* \* \*.”

(The jury retired from the Court Room.)



“The Court: Now, in connection with this letter of January 3rd, 1936, which is a letter between Investment Finance and Pierce Petroleum, as I understand it, you do not propose to connect that up with any of the other defendants?

Mr. Campbell: Not the letter itself, your Honor. I propose to show in that connection that the Defendants Edgerton and Twombly were the principal stockholders of the Pierce Petroleum Corporation as set forth in the minutes which I have offered there and which are signed by the two defendants, holding some 300 of the 405 outstanding shares of stock of that corporation.

We will undertake to show that large loans were made by the Investment Finance Company of funds which had in turn been received from the First Security Deposit Corporation to this Pierce Petroleum Corporation, which funds resulted in a loss of all but a very nominal amount as set forth on the books of Investment Finance Company. [427] That is the nature of the testimony.

Now, as to this latter subject to which I am now directing myself, I am proposing to read—first, I have read minutes showing the appointment of one H. Dean Campbell as auditor or to make an audit of the books of the Investment Finance Company. I am proposing to read at this time the minutes of the Invest-



ment Finance Company showing the receipt and discussion of such report by the Board of Directors. Thereafter, I intend to read such Exhibit which has heretofore been placed in evidence as Plaintiff's Exhibit 46, which was the report referred to and which has heretofore been identified by the witness Long as being a communication of this on or about February 25, 1939, to these Board of Directors of the situation relative to their companies and showing, if at no other time, showing on the part of all of them knowledge of their circumstances.

The Court: Let's go back first to this letter of January 3rd, which seems to be a little different.

Here is a letter signed by Investment Finance Company and addressed to Pierce Petroleum and consented to by Pierce, signed by Edgerton as vice-president of Investment, and Twombly as secretary, and consented by Edgerton as President of Pierce, and Twombly as secretary of Pierce.

I am a little at loss to understand the plaintiff's position. It proposes, as I understand it, that that will be introduced as binding upon Edgerton and Twombly, under all counts. Now, all of the substantive counts are predicated on a scheme to defraud and the use of the mails. The conspiracy count, we are all familiar with that.

Now, is this letter here of January 3rd supposed to be one of the items going to show the

existence of the [428] conspiracy, or is it going to show the carrying out of the conspiracy, or is it intended to show the scheme under the substantive counts? Just what is the purpose of it?

Mr. Compbell: Well, I might state, your Honor, that it is simply offered as one of the chain of circumstances by which the Government contends that these defendants, having diverted the assets, money and assets of the First Security Deposit Corporation into this Investment Finance Company, that they considered that money as their own and treated it as their own, making such investments in enterprises in which they were personally interested, and as illustrative of their intent in connection with those assets.

However, it was offered, as I state, as one of many circumstances from which the jury can infer and draw the approximate intent of these defendants in the use of this money.

In other words, the use to which the money was put after it was taken from the First Security Deposit Corporation is illustrative of the intent with which it was taken and it is in that connection that this particular Exhibit and subsequent Exhibits of a similar character will be offered.

Mr. Lawson: Your Honor, in that connection it would have been very easy for the Government to have alleged that in the indictment,

which they have not done. The completed offense is the advancing of money or property to the Investment Finance Company and there it stops. Now, it would have been very easy in the language stated here by Mr. Campbell, to have charged the defendants here with that, if that is the crime with which they intend to charge us. That is the point.

Secondly, the character of the evidence offered here [429] has no evidentiary value so far as the scheme as alleged in the indictment itself, and at most all that could be said of it is that it shows a collateral or side agreement between two of the defendants which doesn't affect the general scheme.

There may be other such instances throughout the course of the affairs of which we are talking here, but it doesn't address itself to the scheme as alleged in the indictment. It is an entirely different crime. And that is why I think that Mr. Campbell has been in error in his conception of the relationship of some of these things about which he has been talking to the main charge as continued in the indictment. At most it would be a scheme of a conspiracy within a conspiracy, as your Honor well knows, which cannot be produced against us under a charge of this character.

\* \* \* \* \*

Mr. Campbell: The evidence, which is now offered is simply, you might say, a part of the *res gestae* in that it is showing the use to which

the money, which he had converted, was put; and is therefore offered on the intent with which he had converted the money of the First Security Deposit Corporation.

He is not here charged with converting the assets of the Investment Finance Company, nor are we raising any question, nor is there raised in the indictment any question as to the propriety as between himself and the Investment Finance Company, but it is offered as illustrative of the intent with which he had first converted under the terms of the indictment and the bill of particulars, converted assets to the Investment Finance Company for the purpose of using them to his own profit.

[430]

\* \* \* \* \*

We feel that we are entitled to show that they, once having received the funds, that we shouldn't stop short there and say, 'Now, there is your case,' but that we have the right to go the step further and show that they were using those funds to their own individual use and profit.

The Court: \* \* \* Now, so far as divers other ways are concerned, I think the position of counsel for Twombly is sound, that the Government is limited to those transactions insofar as proof against Twombly is concerned.

There is this one other element, however: The indictment says that the defendants under the pretense of loans did convert and divert to

their own use. I have no way of knowing whether this evidence is intended to come within the charge of the indictment of pretense of loans.

Mr. Campbell: May I state, your Honor, in that connection there were only three methods. I wish to be frank with the Court in this regard. There are only three methods by which property of the First Security Deposit Company was diverted away from it. There were the loans concerning which testimony has gone in, by the real estate transactions, and by the trust deeds, all of which have now been covered in the testimony.

It is not the claim of the Government, and it is not the fact that money was loaned from the First Security Deposit Corporation to the Pierce Petroleum. However, the proof and the facts now show that certain large sums of money of the First Security Deposit Corporation were loaned or transferred to the Investment Finance Company, a company in which the defendants had a large stock ownership.

\* \* \* This testimony is offered not as to [431] conversion at all, but it is offered for the purpose of showing the state of mind, the intent, of these individuals in regard to the money and property which they had theretofore converted.

\* \* \* \* \*

The Court: \* \* \* It is a question in my mind as to whether this may conceivably come



under the phase of the charge under the pretense of loans.

Mr. Campbell: I do not claim it does, your Honor.

The Court: You do not claim it does?

Mr. Campbell: No, sir, I do not.

The Court: I wanted to be sure of your position in that. \* \* \* It may be that this is one element which the jury might be entitled to consider as against all of the defendants having to do with the scheme of the conspiracy; that I don't know because it hasn't been offered for that purpose, but I don't believe it is proper for the Government to limit itself in that way \* \* \*.

Mr. Campbell: I will make my offer as to all defendants \* \* \*.

The Court: Now, as I understand it, so far as this particular testimony is concerned, the offer now being made as against all of the defendants only on the matter of intent.

\* \* \* \* \*

Mr. Irwin: (Makes Statement.)

The Court: Let me see if I understand this. A man down in Long Beach owed the Investment Finance Company a considerable amount of money which he had been borrowing for the financing of automobiles, and he was unable to pay the obligation to the Investment Finance Company, but he said to them, 'I have an oil well that [432] looks like a live prospect. I wish you would investigate and I will turn this



over to you at the right kind of a price in payment for some of my obligations to the Investment Finance Company.'

The Investment Finance Company made an investigation and determined that it might be a way of salvaging their account. So they put in Twombly and Edgerton on the Board of Directors of the Pierce Petroleum Company to operate it without Edgerton or Twombly having any individual interest in the Pierce Petroleum Company, and the interest that they represented was the interest of the Investment Finance Company.

Mr. Irwin: That is my understanding at the outset.

Mr. Lawson: I think in that connection, my understanding is that the stock was issued so as to retain control by Twombly and Edgerton until the deal had been worked out, whatever the amount was.

The Court: It was all money of the Investment Finance Company, or money of Edgerton and Twombly personally?

Mr. Lawson: Investment Finance Company, your Honor, I think was responsible for everything in connection with it.

\* \* \* \* \*

Mr. Irwin: It was a producer, then they lost some of their tools and additional money was spent in a fishing job. They never got the job back and it watered up. I understand they sold it for salvage and somebody took it over.

Mr. Adams: May I interrupt you to suggest that you might add as part of that history that the Investment Finance Company then foreclosed. They had also taken a chattel mortgage on the rig and tools and they foreclosed that chattel mortgage and took back to themselves the [433] proceeds thereof to partially reimburse themselves for the loss sustained.

The Court: \* \* \* Now, the offer has been made as to all defendants in connection only with the one element of the offense, as charged in the 16 counts of the indictment, namely, intent.

It has always been my understanding of the law that the specific items having to do with intent need not be alleged in the indictment and need not be set forth in the Bill of Particulars; if the Bill of Particulars is requested on that score, and if it was requested heretofore, it is denied.

It is my understanding of the law that you can't so limit the Government on the question of intent; that the Government may go so far and have been permitted in many instances to go as far as to prove other similar offenses, not for the purpose of showing that the defendant committed those particular offenses but for the purpose of showing intent. Therefore I rule out the objection that the items of intent must not be shown in the face of the indictment and the bill of particulars. \* \* \*

If the Government wants to introduce that evidence, I think they have a right to, so long, as I explained to this jury, and I most certainly shall explain to them as soon as I get them back here, that this evidence which is presently pending before the Court is only going to show intent and is not evidence to show any of the other elements of either the substantive counts or the conspiracy count of the indictment. \* \* \*

The matters having to do with Pierce Petroleum being now offered only to show intent, it is my view that they are clearly admissible under proper instructions to the [434] jury, and I so rule and exceptions will be allowed to defendants.

Mr. Irwin: \* \* \* May I restate the objection?

The Court: Restate the objection. \* \* \*

Mr. Irwin: I object, may it please the Court, to this offer of evidence with reference to the Pierce Petroleum, on the grounds that it is immaterial, incompetent, hearsay, not within any of the issues of the indictment and that in connection with the objection of incompetency, that no foundation has been shown with reference to the defendants Starr, Smale, and Thomas.

Might it be deemed, your Honor, that this objection is made in the presence of the jury before the evidence was in and that it need not be repeated to this entire line of testimony?

The Court: It may be so stipulated, gentlemen?

Mr. Campbell: So stipulated.

\* \* \* \* \*

Mr. Adams: I wish to add, your Honor, the objection to these documents that he had had handed up, that there is no foundation laid for the introduction of the minutes book or of that other document that Mr. Campbell handed to counsel for examination. I don't know the number of that or whether it has a number. Has it a number, Mr. Campbell? That letter?

Mr. Campbell: The minutes book was given 84 for identification, but I am offering, however, only one of the minutes there and offering it on the basis of the signatures of the defendants Edgerton and Twombly and the same is true as to the other documents.

Mr. Adams: As to those documents that Mr. Campbell has now mentioned, I wish to add the further objection of no foundation. [435]

"The Court: The objection on the ground of lack of proper foundation for the admission of the minute book is sustained. The only witness who testified as to the books of the company testified as to her knowledge from the first of January, 1939, so that there is no foundation laid as yet prior to that time.

Mr. Campbell: If the Court please, in that connection, as I think I stated, and as it has heretofore been stipulated as to the signatures of these two defendants—

The Court (Interrupting): I am only ruling on the admissibility of those particular minutes prior to January 1, 1939.

Mr. Campbell: I am only offering one minute of this book, your Honor. I am not offering the entire book. I am offering only the minutes of the stockholders meeting of February 19, 1937, which minute is signed by the defendants Edgerton and Twombly, and I am offering it on the basis of the signatures of the defendants which have heretofore been stipulated to.

Mr. Adams: The stipulation, your Honor, that the signatures of the defendant only went to this extent as I took it, that if evidence was competent and proper and material and in all other respects properly introducible and introduced, that then the stipulation as to the signatures would apply. That was my intention and that is my understanding of the stipulation.

Mr. Lawson: I would like to get myself on record before it gets so far away.

Mr. Adams: If that is not the situation, I would like to withdraw any further stipulation that is to be taken advantage of to that extent, because I never lent it to that extent and I believe the record will bear me out. [436]

Mr. Lawson: I wish to adopt the objections of all counsel who have heretofore stated their objections and, of course, restricting the bill of particulars as made by Mr. Adams, and add the objection on behalf of the defendants Ed-



gerton and Ireland that it is an attempt to prove a conspiracy within a conspiracy, a scheme within a scheme, and not the scheme for the conspiracy as alleged in the indictment.

Further, that the evidence cannot be in the case of this type be received as to any particular defendants and excluded as to others, because the very nature of the offense is a joint offense.

And in this connection, your Honor, I wish to have clarified the position of the plaintiff in regard to its use of the term 'intent.' Mr. Campbell stated at one time in the course of his argument that it was to anticipate the defense of good faith. Now, I want to find out if that is a correct statement. I mean, did I understand counsel correctly to state that?

The Court: I don't think they should be required to do that other than to have rulings on interruptions.

What was your understanding of the stipulation as to the genuineness of the signatures of your clients?

Mr. Lawson: Wherever they appear I will stipulate those are the signatures of my clients.

The Court: Did you intend by that stipulation that any documents signed by them would be admitted in evidence as being genuine documents as they purport to be or only that those were the proper signatures and that outside proof had to be introduced as to the genuineness of the document?

Mr. Lawson: Well, the signature, of course, naturally, if it was the signature of the defendant, that it went to the extent of the document which was signed." [437]

The Court: My understanding of the stipulation, that where a document was signed and you are able to identify the signature, that you stipulated that that was an admissible and competent document subject, however, to your right to establish the fact that there was a forgery or that there was something wrong about the matter which you had a right to do as a part of your case.

Mr. Lawson: I don't stipulate it is competent evidence or admissible for the purpose of this case.

\* \* \* \* \*

Mr. Lawson: I would like to get into the record also before the final ruling in regard to the purpose for this evidence as announced by Mr. Campbell which he has stated as for the purpose of showing intent, and I object further on the ground that it is not in any manner tending to establish specific intent, which is required, and that is the specific intent to violate the law in the manner as described in the indictment. In other words, the crime as charged, and that a mere state of mind has no place in a case of this kind; it is wholly immaterial; and further that in the event that counsel for the Government is unable to show by this evidence and what he may introduce to follow it up, un-

less he can show that the money or the property that he claims was diverted, found itself into the possession of either the defendants Edgerton and Ireland as alleged in the indictment, and that it will only establish probably lack of judgment or mistake of judgment or management, upon the theory of the Government to show that there was a diversion of funds or property as alleged in the indictment, that it is an error that can not be cured.

We believe that we would be entitled to a mistrial, [438] because I doubt very much, as I have urged before, your Honor, that the character of this evidence is such that it cannot be cured by any admonition of the Court.

Mr. Adams: May I speak about this stipulation, your Honor?

To stipulate that because the document has the signature of Mr. Twombly on it that it might go in, it simply waives my right to make the objections I have been making. In other words, I have been making, for instance, lack of foundation, some immateriality, some incompetency. There is no need of making those objections as to any documents that he has his name on, if by that stipulation I have robbed myself of all of the efficacy of all those objections. And I definitely want to say that as far as my recollection of this transcript is concerned, I have not made such a stipulation. \* \* \*

But I am perfectly willing to stipulate that

if and when the Government has established the right to introduce evidence under the ruling of your Honor subject to the objections that may be made, that then after your Honor has ruled that that evidence is admissible, then I would be glad in each and every instance to stipulate to the signature of my client, but I am not going to by so stipulating now with all my right of objection.

Do I make myself clear at this time, your Honor?

The Court: Yes. You may call the jury.

Mr. Irwin: I would like to make a statement as to the auditor's Exhibit 46.

The Court: Yes. You may make your points with regard to that now while the jury is coming down. I went through all of this. I am very familiar with the comments.

Mr. Irwin: Very well. I move at this time, may it [439] please the Court, that the admission of that document 46 might be considered as having been stricken for the purpose of interposing this objection, that that portion of 46, which contains the comments of the auditor, Mr. Campbell, as distinguished from the audit, are opinions and conclusions, and cannot be binding on any of the defendants that I represent. It is a very serious question.

Mr. Lawson: I join in that motion on the grounds as stated.

The Court: I will rule on that later."

(The Jury returns and the following proceedings were had in their presence:)

“The Court: Now, the matters before the Court are the minutes of the stockholders’ meeting of the Pierce Petroleum Corporation under date of February 19, 1937. That was just one, wasn’t it?

Mr. Campbell: Yes.

The Court: Exhibit 84. And the letter dated January 3, 1936 passing between Pierce Petroleum Corporation and Investment Finance Company. The Court rules that both of these documents are admissible to show intent.

You may now ask for a stipulation as to signature.

Mr. Adams: We wish an exception to the ruling.

The Court: You may have the exception.

You may ask for Mr. Adams’ stipulation as to the signatures.

Mr. Campbell: At this time I will ask if it may be stipulated.

Mr. Lawson: For the purpose of the record may we [440] have an exception?

The Court: Yes, it hasn’t gone in. I will take care of that when the time comes. Give them numbers for identification now.

The Clerk: The letter will be plaintiff’s Exhibit 180 and the minutes 181.

Mr. Campbell: Might it be stipulated that——

Mr. Adams: May I ask a question first?



Your Honor, in admitting these minutes, your Honor is admitting them over the objection of no foundation?

The Court: No. It was my understanding that these documents which were being shown, signed by any of the defendants, that they were to be admitted on the stipulation of the signature, and I have been following that policy.

You said that you would now, if you ever entered into such a stipulation, withdraw from it, and would insist upon the Court's first passing upon it materiality, and then you wanted it handed to you, and rather than require a handwriting expert to prove Twombly's signature, then you would then determine what you would do about it.

Now, I haven't admitted this in evidence. I have simply ruled it is material on the question of intent. I have asked counsel to submit it to you, and ask you whether you are willing to stipulate.

Mr. Adams: I don't understand you frankly. I am at a loss. I said to your Honor that if your Honor admitted it in evidence—now, your Honor just said you are not. I don't know whether it is admitted or whether it isn't. If it is admitted, then it must be admitted for some purpose.

What I am trying to point out, if your Honor overrules my objection of no foundation, if your Honor then overrules my objection of hearsay, if your Honor overrules my objection

of not being material, if your Honor then admits it in [441] evidence, then I will be glad to stipulate to the signature, but I want your Honor's ruling on the matter of foundation and the other points.

The Court: You are asking the impossible. How can I admit a thing in evidence when there is no foundation laid so far as the signature is concerned?

What you just stated you had said wasn't what you said at all. You said if I would rule it was material, rather than put the plaintiff to the trouble and expense of bringing in handwriting experts, that you would then determine whether you are going to yield and say that the signature of Mr. Twombly was genuine.

Mr. Adams: I felt, your Honor, this way, as your Honor well said to me the other day, foundation for a document may be laid in many ways.

The Court: That is right.

Mr. Adams: Foundation for this document is being laid in no way except through the signature of Mr. Twombly.

The Court: That is it, exactly. I have already ruled that no other foundation was laid and that other foundation will have to be laid insofar as the Defendant Twombly is concerned unless you are willing to stipulate that those are the genuine signatures of your client.

It cannot be admitted because no foundation has, as yet, been laid as against your client." [442]

\* \* \* \* \*

Mr. Adams: I won't stipulate to anything at the present moment then under the ruling, and I take an exception to the ruling.

Mr. Campbell: If your Honor please, may I withdraw these two exhibits from the identification numbers?

The Court: Yes. Just leave the identification numbers on them.

Mr. Campbell: May I withdraw or take with me the two exhibits?

The Court: You may take them out of court.

Mr. Campbell: Now, I wish to read from the minutes of the Investment Finance Company. Might I state, Your Honor, that the statement I made just prior to the noon recess that the evidence now being offered is being offered as to all defendants with the exception of the Defendants Twombly and Cronk still apply?

The Court: Before we go into that, I think I want to explain my ruling. Maybe I haven't made it clear.

These minutes and a letter to which I alluded were offered in evidence. There was no foundation laid for their admission by having anyone take the stand and show that they were the records of the corporation kept in the regular course of the business and that it was

the habit of the company to keep records of that type.

In the absence of that foundation the documents were, regardless of how I felt about their materiality if admitted, they were not admissible unless they could be admitted under the stipulation which we have heretofore had, \* \* \* council making the point that no proper foundation was laid, and refusing to take any position as to signatures, they cannot at [443] this time be admitted without a further foundation as to the defendant Twombly.

As to the defendants represented by the two attorneys, they may be admitted under the stipulation.

Mr. Irwin: Might it be understood that the particular objections made outside of the jury's presence might be deemed to have been made and they still apply, together with your Honor's ruling and exception allowed?

The Court: They will go in just the same.

Mr. Campbell: Reading from plaintiff's Exhibit 37, the minutes of the meetings of the board of directors of the Investment Finance Company.

Mr. Irwin: Pardon me, your Honor, this part here which he is about to read is in connection with that Exhibit 46. Your Honor said you reserved a ruling on that matter. The portion he is about to read refers to the exhibit that is under consideration by your Honor.

The Court: Is that being offered as against

all defendants with the exception of Cronk and Twombly?

Mr. Campbell: Yes, your Honor.

The Court: And you state that you are going to connect it up?

Mr. Campbell: Yes, your Honor.

The Court: With the Counts of the indictment?

Mr. Campbell: Yes.

The Court: They may be admitted subject to the same objection and the same ruling.

Mr. Lawson: Your Honor, the matter really hasn't received a great deal of attention, and I think it is a very important part. Your Honor has read the comments, and you are familiar with them. I merely submit this is a test: That if the witness were on the stand himself [444] he wouldn't be permitted, under objection, to testify, because he would be stating opinions and conclusions. I think that is sound, your Honor.

The Court: I disagree with you on that. I shall when the time comes instruct the jury that this is not being admitted to prove the truth of the statements contained in it, but simply to show that that information was communicated to the defendants. You mean to tell me that if that auditor told these defendants that he wouldn't be permitted to say that he told them in person?

Mr. Lawson: Under the circumstances of



this case I would take that position, your Honor.

The Court: Then that is a matter that will have to go to the Circuit because I disagree with you on it. I will admit it on that point. It is not being admitted to show the truth or falsity of what is contained in that auditor's report, but to show that that audit report was delivered to these directors.

Mr. Lawson: I would like to have included in the objection, which I have already made, the specific objection of hearsay. And further, that it has not been connected up in this manner: That the mere fact that it was on file with the corporate records is no proof of the direct knowledge of the Defendants Ireland and Edgerton.

The Court: That will be also an element for the jury to determine. If it isn't connected up, so that I deem it may be given to the jury, I will strike it before the trial is through. For the present on the promise to properly connect it up and bring it home to the defendants, it will be admitted.

Mr. Lawson: Exception.

Mr. Campbell: I will commence reading from plaintiff's [445] Exhibit 37, the minutes of the board of directors of the Investment Finance Company.

'Meeting of March 15, 1939.

The following directors were present:

Messrs. R. W. Starr

A. R. Ireland

E. C. Thomas

J. L. Smale

Miss F. A. Anderson.

In addition to the directors J. Howard Edgerton, Mr. Bundy Colwell, and Miss Florence Long were present.'

Reading in part:

'On motion of Mr. Thomas, seconded by Mr. Smale, and carried, it was resolved that the matter of Mr. H. Dean Campbell's report and recommendations for the year ending December 31, 1938 be referred to our attorney who will consult with Mr. Campbell and make recommendations to the board in connection with both financial and policy matters mentioned in the report, with power to call a special meeting of the board at his discretion.' Minutes signed, 'R. W. Starr, Chairman.'

Mr. Campbell: May I read this from the stand?

The Court: Yes. All of this will be subject to the same objection, same ruling, same exception.

Mr. Campbell: Plaintiff's Exhibit 46. It is on the letterhead of H. Dean Campbell, Certified Public Accountant, 416 West 8th Street, Los Angeles, February 25, 1939.

Mr. Campbell:

‘Board of Directors  
Investment Finance Company  
5658 Wilshire Boulevard  
Los Angeles, California [446]

You will find herewith the exhibits and schedules which set forth the result of my examination of the accounts of your company as of December 31, 1938. The statements included in this report are as follows:

Exhibit A—Balance Sheet as of December 31, 1938.

Exhibit B—Consolidated balance sheet as of December 31, 1938.

Exhibit C—Consolidated statement of profit and loss for the year ended December 31, 1938.

Schedule I—Schedule of accounts receivable.

Schedule II—Schedule of contracts receivable.

Schedule III—Schedule of notes and loans receivable.

Schedule IV—Schedule of investments.

Schedule V—Interlocking stock holdings.

Schedule VI—Interlocking directorates.

Schedule VII—Interlocking financial obligations.

Attention is directed to the comments which follow, and also to the supplementary report on the First Security Deposit

Corporation. The principal purpose of including Schedules V, VI, and VII, is to direct visually, your attention to the fact that because of the close affiliation of the allied companies, it is almost impossible to confine comments or figures to one company alone. Much that must be said about the activities of one company may well apply to several.

Furthermore, while several legal matters [447] will be raised in the comments which follow, it must be observed that in no case is it the object of your auditor to do more than bring the matters up for discussion. Where legal opinion is desired, either as to the procedures followed in the organization and operation of any of the companies, or as to the present legal status of any accounts, it is not only assumed that you will, but you are advised to consult Mr. Edgerton.

Yours truly,

(Signed) H. D. CAMPBELL, C.P.A.'

The Court: At this time, gentlemen of the jury, I want to caution you again that this evidence is not, or the minutes which were just read, binding upon the Defendant Cronk or Twombly; and that this evidence is not being introduced to prove the truth of the statements made in the document. This is being introduced, as I understand the position of the plaintiff, to show that this information was com-

municated to certain individuals. Is that correct?

Mr. Campbell: That is correct, your Honor.

The Court: In order that you may use that as an element to determine the intent with which the various acts were done by these various defendants.

In connection with this document, or these two documents, the minutes and this auditor's report, in determining intent therefrom, there may be evidence introduced later in the trial as to what was done after these matters came to the attention of these individuals. You may take those matters, if they do come before you, into consideration also in connection with these documents in determining intent, as the Court will at that time instruct you when the point is raised. [448]

Mr. Campbell:

‘Investment Finance Company.

Comments

Cash

Cash on hand was counted and reconciled to December 31, 1938, and the bank accounts were confirmed by letter and found in order.

Accounts Receivable.

The accounts receivable are presented in detail on Schedule I and total \$2,038.69, consisting largely of insurance premiums uncollected by the Wilshire Insurance Agency.



### Contracts Receivable.

Contracts receivable as per Schedule II are automobile sales contracts. They are presented on Exhibit A at book value, although more than 50% of the dollar balance at December 31, 1938 have been pledged with the American National Bank of Santa Monica as security for a loan which at that date amounted to \$8,700.00.

### Notes and Loans Receivable.

Of a total of \$48,413.27 in notes and loans listed in Schedule III, 37,400.00 is unsecured. In fact, the largest single note of \$16,650.00 is signed by Battelle-Dwyer & Co. which, it is understood is no longer in existence.

### Investments.

Schedule IV is a presentation of the securities into which the company has put most of its funds, obviously more for purposes of control of the various companies concerned than for income from the securities themselves. Most of the investments have been in the common stocks (or voting [449] stocks) of the various companies upon which little or no dividend income has yet been realized.

### Pledge Agreement—California Federal Savings & Loan Securities.

The item of securities owned in the California Federal Savings and Loan Association which is carried at \$15,000.00 is sub-

ject to a pledge agreement of the liquidated Consolidated Investors Corp. with one F. E. Jones, and is secured by the deposit with this company of the following shares of stock in this company:

W. S. Brayton (Has not been assigned to Investment Finance) .....	5,000 Shares
R. W. Starr.....	2,500 Shares
A. R. Ireland.....	5,000 Shares
J. H. Edherton.....	1,666 Shares
F. A. Anderson.....	1,200 Shares
Ed C. Thomas.....	1,160 Shares

---

Total Shares Hypothecated....16,526 Shares

The above listed individuals are all the endorsers of the said pledge agreement. This agreement apparently was originally intended to terminate on July 23, 1939, but it should be noted that there was a typographical error on the agreement itself so that it actually reads July 23, 1936.

#### Deed of Trust—Pacific Brick Co.

Interest has been accrued to August 1, 1938 on a first trust deed on all the property of the Pacific Brick Co., which was the approximate date of acquisition by this company. [450]

#### Real Estate.

The real estate shown on Exhibit A at \$5,608.19 consists of a house built for re-

sale. It is mortgaged to the extent of \$3,673.18 as shown under First Trust Deed Payable.

Accounts Payable—First Security Deposit Corporation.

This account has gradually been built up to its present figure over the past three years by numerous advances from First Security Deposit Corporation on open account without security. Interest has been paid at the rate of 3 per cent per annum, but this interest has been paid in bonds of the First Security Deposit Corporation at face value, thus reducing the effective interest rate because all such bonds purchased by this company have been acquired at a substantial discount.

#### Inter-locking Schedules.

Schedules V and VI respectively, show the inter-locking stockholders and directors of the eight related companies. Schedule V is presented on transparent paper so that the two charts may be considered either jointly or separately. Only those stockholders or directors are included on the charts who are connected with two or more of the companies involved.

Schedule VII presents inter-company financial obligations with amounts. The broken lines indicate unsecured obligations and the solid lines indicate obligations which are either fully or partially secured. [451]

General.

With reference to the "Noon deal" mentioned on page 2 of comments, no attempt was made to verify the present status of the note or pledge agreement. It would appear to be a doubtful asset at best. It is also possible that the manner of showing the account as Savings and Loan shares is questionable since probably all the Investment Finance obtained was an agreement or contract rather than the shares themselves.

Possibly the matter of most importance to the Directors should be the prime question of whether or not the company in its entirety is fraudulent. These specific points should be considered by the Directors with the idea of applying constructive remedy if (1) the Investment Finance Co. is a fraud, and (2) if any remedy be available. Certain hypothetical questions are set forth for your consideration.

The questions propounded are based on the unquestioned fact that (1) control and ownership of this company and the First Security Deposit Corporation are so closely interlocked as to appear identical in effect (see Schedules V, VI, and VII); (2) profits which might accrue to the First Security Deposit Corporation would be diverted to the narrower limits of the fewer shareholders of the Investment Finance Co., to

the loss of shareholders in the former company; and (3) funds used to promote the various enterprises were basically the funds of the First Security Deposit Corporation. [452]

These questions, then, should be answered, and do they constitute fraud:

(a) The purchase of First Security Deposit Corporation bonds at a discount, and the re-sale of these securities to that company at par, including accrued interest, retaining the profits in Investment Finance when, in practically no instance, had the First Security Deposit ever paid face value to others?

(b) Taking over the Wilshire Insurance Agency, and diverting commissions formerly earned by the First Security Deposit into the income of the Investment Finance?

In addition to these questions there might be raised the more general one of whether, since in acquiring funds from Security—which funds were in most instances profitably invested—the re-investment in such mismanaged enterprises as Bonds-17, for example, might on its face be construed to be fraud and mismanagement regardless of the answers to the hypothetical questions propounded above.

It would also appear that perhaps in some instances letters sent out by Mr.



Cronk might be criticized as being misstatements of fact, and still further, might bring the company under the S. E. C. because they were sent through the mails out of the state.

In summarizing, it would appear that it might be difficult to justify legally, the existence of the company in any particular, as it is now operating. As your auditor, I wish merely to direct the [453] above matters to your attention, realizing that you have no doubt considered them before.

To Directors interested, attention to the supplementary comments on the First Security Deposit Corporation might be directed.'

Attached thereto is Exhibit A, Investment Finance Company, Balance Sheet, December 31, 1938, setting forth the following assets:

'Current Assets.

Cash on hand.....	2,477.64	
Bank of America.....	1,258.14	
America National Bank.....	694.64	
Accounts Receivable		
(Schedule I) .....	2,038.69	
Contracts Receivable		
(Schedule II) .....	21,625.94	
Notes Receivable		
(Schedule III) .....	32,560.42	
Loans Receivable		
(Schedule III) .....	15,852.85	
		<hr/>
Total Current Assets .....		76,508.32

## Investments. (Schedule IV)

American National Bank (1).....	32,296.00
First Security Deposit Corp.	
(2) .....	86,393.75
Bonds—17 Dog Food Co. (3).....	44,935.00
Calif. Fed. Sav. & Loan Assn.	
(4) .....	15,000.00
Pacific Brick Co. (5).....	29,850.00
American Bldg. & Investment Co.	
(6) .....	17,000.00
Second Trust Deeds (7).....	196.19
<hr/>	
Total Investments .....	225,670.95

[454]

## Fixed Assets

Automobile .....	1,027.88	
Less: Depreciation		
Reserve .....	401.13	626.75
<hr/>		
Used Car Lot #1 Im-		
provements .....	2,145.17	
Less: Depreciation		
Reserve .....	429.05	1,716.12
<hr/>		
Furniture and Fixtures..	252.00	
Less: Depreciation		
Reserve .....	5.71	246.29
Equipment .....		17.85
Real Estate (Contra) .....		5,508.19
<hr/>		
Total Fixed Assets .....		8,215.20

## Other Assets

Prepaid Expenses .....	240.35
Organization Expense .....	563.87
Deposits .....	150.00
Collections Advanced .....	70.00
<hr/>	

Total Other Assets .....	1,024.22
Total Assets .....	311,418.69

## Liabilities

## Current Liabilities

## Accounts Payable—First Security

Deposit Corp. ....267,842.10

Accounts Payable—Miscellaneous 486.70

## Notes Payable—American Na-

tional Bank ..... 8,700.00

Accrued Insurance Payable ..... 144.82

## Accrued Unemployment Ins. Ex-

pense ..... 35.47

Accrued Old Age Benefit Expense 13.13

Total Current Liabilities .....

277,222.22

## Other Liabilities

## First Trust Deed Payable

(Contra) .....

3,673.18

## Reserves and Deferred Credits

[455]

## Unearned Discount on Contracts

(Schedule II) ..... 1,074.19

Suspense ..... 13.05

Dealers Mutual Reserves..... 2,071.65

Reserve for Contract Losses..... 29.30

## Reserve for Unemployment In-

surance Tax ..... 13.50

Reserve for Old Age Benefit Tax 13.14

Total Reserves and Deferred

Credits .....

3,214.83

## Net Worth

## Capital Stock

(Authorized 200,000 Shs.

Par \$1) Outstanding ..... 31,398.00

## Operating Surplus

## Balance December

31, 1937 ..... 342.07

## Net Loss Year 1938

(Exhibit C) .....4,431.61

Surplus (Deficit) Dec. 31, '38..... 4,089.54

Total Net Worth .....

27,308.46

## Total Liabilities and

Net Worth .....

311,418.69'

The Court: Now, gentlemen, I again want to caution you that you are not to consider that audit report (or the minutes) for the truth or falsity of what they contain other than the showing that is indicated, the minutes, that this document was discussed. It has been introduced and been accepted only to show the intent or as one of the elements of intent together with other things that may be introduced during the course of the trial, and you are to keep your mind open even on that element." [456]

---

CLARENCE N. BRUCE,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified further as follows:

In my examination of the books and records of the Investment Finance Company and the First Security Deposit Corporation, I determined the amounts borrowed in cash or other assets by the Investment Finance Company from the First Security Deposit Corporation after the month of March, 1939; the amounts borrowed in cash in the months of April, May and June were respectively \$7,000, \$8,000 and \$7,000; the July real estate had a book value of \$15,000; September cash \$500, October cash \$3,500; November real estate book value \$12,900; and in 1940, January cash \$10,000; March cash \$500.00;

(Testimony of Clarence N. Bruce.)

“Q. Will you state, giving the date upon which bonds, that is to say, the date, month and year, upon which bonds were conveyed or transferred from the Investment Finance Company to the First Security Deposit Corporation, giving the face amount of the bonds and accrued interest for which credit was given; and stating the application made of such bonds; the cost to Investment Finance Company of such bonds; and what the profit and loss account of Investment Finance shows, if anything, in connection therewith:

A. March 24, 1939, collateral trust bonds of the First Security having a face principal amount of \$3600, to which accrued interest of \$72 was added, totalling \$6,372, transferred to First Security, for which full credit was given as follows: To apply on the principal of the debt due First Security, \$578.85; in exchange for first trust deeds, \$3,093.15.

The cost to Investment Finance Company for such bonds was \$2,559.58. The profit to Investment on such bonds was \$1,112.42. [457]

April 29, 1939, First Security collateral trust bonds having a face value of \$63,137.70, to which accrued interest of \$14,207.89 was added; totalling \$77,345.59 were transferred to First Security, for which full credit was given as follows: To apply on the principal amount of the debt due First Security \$74,591.88; to apply on the interest due on such debt \$2,753.71.



(Testimony of Clarence N. Bruce.)

The cost to Investment Finance Company for such bonds was \$48,642.52. The profit realized by Investment Finance Company on such bonds was \$28,703.07.

May 31, 1939, collateral trust bonds, of the First Security, having a face principal amount of \$4,928.65 to which accrued interest of \$1,146.07 was added, totaling \$6,674.72, which bonds were transferred to the First Security Deposit Corporation, for which full credit was given as follows: To apply on the principal of the debt due First Security, \$6,074.72.

The cost to Investment Finance Company for these bonds was \$5,354.16. Investment Finance Company realized a profit of \$720.56 on such bonds.

June 30, 1939, First Security collateral trust bonds having a face value principal amount of \$825.63, to which accrued interest of \$214.24 was added, totaling \$1,039.87 was transferred to First Security, for which full credit was given as follows: To apply on the principal of the debt due First Security \$1,039.87.

The cost to Investment Finance Company for these bonds was \$936.67. Investment Finance Company realizing a profit on such transaction in the amount of \$103.20.

On July 31, 1939, First Security collateral trust bonds having a face principal amount of \$500, to which accrued interest in the amount of \$22.50 was added, totaling \$522.50 [458] were

(Testimony of Clarence N. Bruce.)

transferred to First Security Deposit Corporation for which full credit was given as follows: To apply on the principal of the debt due First Security \$522.50.

The cost to Investment Finance Company for these bonds was \$522.08; profit to Investment Finance Company on such bonds was 42 cents.

On October 31, 1939, collateral trust bond of the First Security, having a face principal amount of \$1.28, plus accrued interest of 51 cents, totaling \$1.79 was transferred to the First Security, for which full credit was given as follows:

To apply on the debt, \$1.79; the cost to Investment Finance Company of this bond was \$1.79, no profit or loss resulting." [459]

"The Court: In order to keep the record clear, Mr. Bruce, on one or two occasions you said that certain real property was borrowed.

\* \* \*

The Witness: It was certain real estate upon which the valuation was placed, apparently mutually agreeable, and it was the book value on the First Security books was transferred to Investment Finance Company and the amount of that real estate was added to this account payable.

The Court: There is nothing in the books

(Testimony of Clarence N. Bruce.)

to indicate that that particular real estate had to be returned?

The Witness: No, sir,

Mr. Campbell I am going to read now from plaintiff's Exhibit 21, the minutes of the board of control of the Realty Deposit Company, reading from the minutes of November 13, 1933.

This is offered as to all defendants. I am going to a new subject. These are the minutes of the board of control of the Realty Deposit Company, plaintiff's exhibit 21, and I am offering this line of testimony as to all defendants subject to being connected up.

The Court: It will be received subject to a motion to strike and an exception will be allowed.

\* \* \* \* \*

Mr. Irwin: And may I have this understanding, if it is agreeable to the Court, that when counsel hereafter reads from any documents that have heretofore been introduced, there is no necessity to repeat the objections that were made at the time the document was received.

The Court: Yes, it is so stipulated.

Mr. Adams: I do not know what that former objection contained, your Honor, because it was so long ago since [460] we made it, but may it have with it the objection that it is hearsay and that it is incompetent? I believe

(Testimony of Clarence N. Bruce.)

the objection of materiality has long since been made and incorporated within the objection.

The Court: The objection may have been deemed to have been made and overruled and exception allowed subject to a motion to strike.

\* \* \* \* \*

Mr. Campbell: Reading now from the regular meeting of the board of control of the Realty Deposit Company, November 13, 1933, which is a portion of plaintiff's exhibit 21, reading in part only:

'All members of the board of control were present. Item 6, Mr. Edgerton was called from the meeting. 7, the board of control authorized Hunter Nessler, assistant secretary, to execute contract of sale for real estate located at 1122 Sterns Drive to J. Howard Edgerton,' dated November 3, 1933, copy attached.

The minute is signed 'Dr. R. W. Starr, President.' And attached thereto is a communication dated November 13, 1933:

'Board of Control,  
Realty Deposit Company,

I am today in receipt of an offer from J. Howard Edgerton, of \$2,300.00 in cash for property located at 1122 Sterns Drive, Los Angeles. Mr. Edgerton opened negotiations prior to the establishment of this company for the purchase of this property in \$7,700.00 First Security bonds. Inas-

(Testimony of Clarence N. Bruce.)

much as we have sufficient funds to cover this at a price better than \$28.00, I consider it advisable that we accept it on a cash [461] basis, and supply the bonds ourselves which we will be able to do, not to exceed \$2,000.00. As Mr. Edgerton is paying all expenses, it will give us a net cash profit at least \$300.00.

Yours very truly,

S. H. NEFFLER.' "

The witness further testified: That the books and records of the First Security Corporation showed a transaction between the Company and the defendant J. Howard Edgerton on April 24, 1934.

"Q. Now what do the books disclose as the consideration received for this real property?

Mr. Lawson: \* \* \* We object to this as not proper evidence on the ground that it is not calling for a summary of evidence. \* \* \* The books constitute the best evidence.

Mr. Irwin: I interpose an objection to this line of testimony on the grounds it is immaterial and doesn't tend to establish any of the issues raised in the indictment as to any of them.

The Court: The objection will be overruled and exception allowed, subject to a motion to strike, if not properly connected up.

\* \* \* \* \*



(Testimony of Clarence N. Bruce.)

Mr. Lawson: \* \* \* I would like to add to the objection heretofore made, the specific objection that this evidence is incompetent, irrelevant and immaterial, and not within the issues of the case in that it has no bearing upon any particular charge as alleged in the indictment. It is an isolated transaction tending to create prejudice, \* \* \*. [462]

The Court: The objection will be overruled. The rule of law I think is very clear.

Mr. Lawson: Exception.

The Court: \* \* \* it is frequently impossible to do other than to take a lot of different items, and the jury are entitled to consider a lot of different items in order that they may arrive at a determination under the instructions of the Court. If, at the conclusion of the plaintiff's case, the motion to strike is made, and I feel that it has not been connected up, I will then strike it. In the meantime, on the plaintiff's undertaking to connect up these various items I am admitting them \* \* \*.

Mr. Lawson: I would want to include in the objection the remoteness of the evidence.

The Court: Are you introducing this to show intent only?

Mr. Campbell: Yes."

Thereupon the witness testified: That he had found the entries in plaintiff's Exhibit 24, and that the account shows a debit to the account.

(Testimony of Clarence N. Bruce.)

“A. That is, the entry shows a debit to the account, company’s bonds acquired at cost, \$7,155.06; the debit to the account Reserved For Depreciation, Real Estate (out of trust) \$199.40; credit to real estate, Harris No. 515, \$7,139.09; profit and loss on real estate, \$215.37. This Harris No. 515, is the name on the company’s books by which the property at 1122 Sterns Drive was known. The explanation given for the entry here is No. 515-R232, sold by J. Howard Edgerton for bonds A6646-19.73; A6931-80; A5033-\$5,600.00; A6637-\$1,455.33; total \$7,155.06. [463]

Q. Now, with reference to those bonds which you have just referred to as having been received from Mr. Edgerton in connection with this deal, did you examine the books and records of the First Security Deposit Corporation for the purpose of determining the source of such funds? A. Yes.

Q. What did your examination disclose in that connection?

Mr. Adams: I would like to get an objection in here, an additional objection to the ones I have had.

The Court: Never mind any argument. The objection will be overruled; exception allowed; subject to a motion to strike.

Mr. Adams: It is also hearsay.

Mr. Butler: That is as to all defendants?

The Court: As to all defendants.

(Testimony of Clarence N. Bruce.)

Mr. Lawson: I would like to have each record rather than a summary by this witness, as to what it shows.

The Court: Your request will be denied, if it is understood that he will produce them afterwards, and he is summarizing them now.

Mr. Lawson: Exception."

The Witness: The record discloses that these bonds were the property of the First Security Deposit Corporation. Bond No. 6646 for the face amount of \$19.73 was acquired by the First Security Deposit Corporation on March 13, 1934, at a price of \$4.93; bond 5033 in the face amount of \$5,600 was acquired by the First Security on March 28, 1934, at a price of \$1,708; bond No. 6637 in the face amount of \$1455.33 was acquired March 28, 1934, by the First Security at a price of \$465.71; bond No. 6931 in the face amount of \$80.00 was acquired by the First [464] Security on March 20, 1934, at a price of \$28.00. The total full face amount of those bonds is \$7,155.06 and the total price paid to the First Security for such bonds was \$2,206.64. The records reflected that these bonds were transferred from the First Security Deposit Corporation to J. Howard Edgerton on the 20th day of April, 1934, and the price paid for them by First Security is reflected in the records as \$2,021.29.

(Testimony of Clarence N. Bruce.)

“Mr. Lawson: \* \* \* There was one part that Mr. Bruce finally pointed out to me which shows the substance of the transaction from the records and is the result of it—‘the witness said profit or loss in real estate.’

The Witness: I read it verbatim.

Mr. Lawson: It shows profit.

The Witness: It is a credit item, that is correct. The ledger account is under the title ‘profit and loss.’

The Court: Is that a debit or a credit to the profit and loss account.

The Witness: That is a credit account. That is ‘and’ profit and loss. That is a credit account which would be normally a profit account.”

The witness further testified: That as of August 31, 1940, the books of the Investment Finance Company reflected that there was an obligation to do to First Security on notes payable in the amount of \$250,465.80. That obligation was retired as of that date; assets were transferred to First Security.

“Q. Will you state what those assets were as reflected by the books?

Mr. Irwin: Might it be understood that this testimony as to the items is particularly objected to as [465] immaterial, and not within any of the issues of the case.

The Court: The objection may be considered to be made as to all defendants to whom

(Testimony of Clarence N. Bruce.)

the testimony is applicable; overruled; exception allowed subject to a motion to strike unless properly connected up.

Mr. Irwin: I should like to add the objection of hearsay.

The Court: It may also be considered to have been objected to on the ground of hearsay, and overruled; an exception allowed.

The Witness: Notes receivable, \$44,010.02; obligations of the Pacific Brick Company, \$38,415.33; obligations of the Bond-17 Dog Food Company, \$111,018.81; obligations of the American Building and Investment Company, \$19,339.74; stock of the American National Bank of Santa Monica, \$23,646.00; stock of the First Security Deposit Corporation, \$29,984.80; second trust deeds, \$28.67; furniture and fixtures, \$12.67. Prepaid expense, \$17.47; Suspense, which is the reserve for contingencies, \$250.25; total, \$266,723.76.

By Mr. Campbell:

Q. Now, with reference to the notes receivable, will you state of what items that consisted?

A. Battelle-Dwyer Brokerage Company, \$100; C. E. Kenner, \$1.00; Roy A. Muller, \$6,543; P. S. Noon, \$10,200; R. W. Starr, \$11,050.50; J. Howard Edgerton, \$10,084.25; Emery Hallowell, \$5,371; E. C. Thomas \$236.21; A. R. Ireland \$500; James White \$23.06."



(Testimony of Clarence N. Bruce.)

(The following conference at the bench was held outside the hearing of the Jury.) [466]

“The Court: When you come to breaking these down, I think that the objection will be sound as to those corporations in which it can’t be shown that there was an interest on the part of these defendants.

Mr. Campbell: You think that would apply to the form of the obligation which was transferred, your Honor?

The Court: Yes. I think that when you get beyond the total then you are getting into something that might be prejudicial, and I think the objection on that ground is sound.

\* \* \* \* \*

Mr. Campbell: I think it is true as to most of these companies that the defendants went on the board as a matter of policy of the Investment Finance Company, but that is not true, we intend to show, of two of such investments: Pierce Petroleum and Pacific Brick Company; as to the others we will abide by your Honor’s ruling in that connection.

\* \* \* \* \*

Mr. Lawson: To save time, we know the facts, I think, and I think that you will agree whatever stock was in the hands of the defendants here did not constitute in any measure control of the Pacific Brick.

Mr. Campbell: They had a minority interest.

(Testimony of Clarence N. Bruce.)

Mr. Irwin: 3,000 out of 50,000-odd thousand."

(The following proceedings were had in the presence of the Jury.)

The witness further testified: That at the time of the transfer of these assets, the Investment Finance Company transferred the notes payable to First Security, \$250,465.80; reserves for depreciation on furniture and fixtures \$3.15; notes payable [467] to the American National Bank in Santa Monica \$1,000; reserve for contingency \$250.00; making a total of \$251,718.95.

"Q. Now, as of that 31st day of August, 1941, what do the books and records of the Investment Finance Company reflect as to profit or loss from operations of that company?

Mr. Irwin: Your Honor, I don't mean to interrupt. My objection a few minutes ago goes to all this line of testimony, would it not?

The Court: Same objection and same ruling.

The Witness: The books reflect that the Investment Finance Company had a deficit of \$16,393.19."

The witness further testified: The assets transferred exceeded the liabilities transferred by \$15,004.81. It was taken up in the capital surplus account of the First Security in the same status as donated surplus.

(Testimony of Clarence N. Bruce.)

(In the absence of the Jury, the following proceedings were had:)

“The Court: As I understand it, the Government proposes to go into the transaction, the history and the organization of two of these corporations that we were discussing yesterday as A to X; is that correct?

Mr. Campbell: The Pierce Petroleum and the Pacific Brick Company.

The Court: In order that we may argue that out now, while we have the time, what is the theory of the Government as to that connection. Are those matters going to be introduced as applicable to all defendants and are they to be introduced as bearing only on intent?

Mr. Campbell: Yes, your Honor. [468]

Mr. Lawson: I don't see how the evidence, that the Government intends to introduce, is applicable to the intent, the quality of the intent, as involved in this case. The Pacific Brick Company, for example, I think the evidence will show a long series of transactions. along toward either the middle or the end one or two of the defendants acquired some stock in the Pacific Brick Company. The defendant Edgerton received a small amount of stock which he considered as satisfaction for services rendered in connection with that Pacific Brick Company; and some other services were performed by some of the other defend-

ants. I think that there were two other defendants. They actually earned whatever compensation was given to them in the form of stock, and it was a very small percentage. That was theirs. It was an individual transaction as between the Pacific Brick Company and the different defendants.

It is not related to whatever assistance was given to the Pacific Brick Company from funds furnished by the Investment Finance Company. I can't, by any stretch of the imagination, see where that particular stockholding would be a justification for introducing into evidence all of the transactions of the Pacific Brick Company because, when it is all said and done, about the only thing that you could deduce from it would be the fact that the funds advanced to the Pacific Brick Company, by the Investment Finance Company, resulted in a loss. \* \* \* He intends to show that that money was put into the Pacific Brick Company and it was a bad investment.

Now, the Government can't show, I am satisfied, and I think Mr. Campbell will probably corroborate it, that any of that money, that was advanced by the Investment [469] Finance Company, found its way into the pockets of any of these defendants.

When you get all through with these transactions you have nothing left but an impression that these men made some mistakes in management.

What has that to do with the specific intent to formulate a scheme, such as alleged in the indictment, back in 1931 or 1932, to convert the assets of the old Railway Mutual Company, and thereafter to divert those funds to the Investment Finance Company?

They are bridging a span here of five, six, or seven years to relate back to the formation of this scheme, and to me it seems that much of the evidence, that the Government has promised to connect, they are going to have a great deal of difficulty. \* \* \*

They have got to prove right from the very beginning that the intention to reorganize the Railway Mutual Company was done at that time with the specific intent to take the funds that belonged to the Railway Mutual Exchange in the manner in which it is alleged in the indictment.

But here we get into the ramifications of the management of the Pacific Brick Company as to its management, whether or not they were justified in doing what they did.

Your Honor, it involves so much that we would be driven to get into all of the operations of the Pacific Brick Company. There was a reorganization of the Western Brick Company. There was a transfer of assets, and litigation grew out of that, extended over a period of two years, and the defendant Edgerton was in the midst; he handled all of that litigation for a period of two years, got outside financ-



ing to help build up the Pacific Brick Company. \* \* \*. [470]

The Court: \* \* \* As I understand, Mr. Lawson, and I have gone all over this to be sure, we refreshed our memory as to what the indictment specifically charges, it is Mr. Lawson's contention that if any of the substantive counts or the conspiracy count are to be substantiated by the plaintiff, that the crime was complete when we investigate the organization, functioning, and dealings of the Investment Finance Company; and that we can't go beyond the records, including books of account, minute books, and other records of the Investment Finance Company because that completes the crime alleged; that if we start in to an investigation of the organization functioning, and the dealings of these corporations, which we have referred to as Corporations A to X, to whom money was loaned by Investment Finance Company, or in which companies Investment Finance Company had an interest, we are getting into an interminable amount of proof, and placing the defendants in a position of having to spend many days in going back in the history of these separate corporations and showing that they were rigidly organized in good faith; that they had a chance for their White Alley, that while they may have made bad investments and it may be, as conditions turned out, their investments were valueless, that there was no bad faith in con-

nection with any one of these corporations A to Z, which could properly be brought home to these defendants other than as is indicated by the books and records of the Investment Finance Company.

And that to go into those matters would be prejudicial to the interests of his clients for several reasons and, specifically, that it would becloud the issue and might confuse the jury in trying the defendants for crimes not alleged in the indictment. Have I stated substantially your position? [471]

\* \* \* \* \*

Mr. Campbell: \* \* \* If I may address myself to the subject which was under discussion prior to the recess, namely the proposed evidence relative to the so-called corporations, A to Z, I wish to state at the outset that in my *considerate* opinion that the defendants, aside possibly from such investment as the Pierce Petroleum, that the defendants entered into these various investments in good faith, believing that they were profitable enterprises, and we are not charging them with bad faith, which it may or may not have been, as to making those investments.

The Government's theory, however, is this: I might say it is two-fold. In the first place, I wish to direct the Court's attention to the allegation appearing at the very bottom of page 4 of the indictment:

‘That the said defendants at all times represented and pretended that said First Security Deposit Corporation was organized for the purpose of and was duly and actively engaged in the liquidation of the said assets received by it from the Railway Mutual Building and Loan Association; whereas in truth and in fact, the defendants, and each of them, then and there well knew that no such liquidation was in fact being carried into effect and the said defendants were, as hereinafter alleged, converting said assets to their own use and benefit;’

\* \* \* \* \*

The ultimate fact to be considered is not the management of these other concerns. We are not concerned with that, nor do we intend to offer evidence in that regard, but we feel that we are entitled to place before the Jury the nature of those investments; that is to say the type [472] of company in which the investment was made and the nature of the investment. That is to say, whether by stock or other security or by loans and so on.

To that evidence the jury can look in part for the intent of these defendants in diverting the funds of the First Security Deposit Corporation to the Investment Finance Company. In other words, it is our contention that that evidence will show that the defendants’ scheme was to obtain large profits, which

profits, from the setup of the Investment Finance Company, would be to their own profit and not to the profit of the First Security Deposit Corporation. It is with that thought and upon that theory that the evidence is being offered.

It is being offered in the second place as to this representation I have pointed out in the indictment, that they were in the process of liquidating. The fact that this money was first diverted to the Investment Finance Company and then placed into the form of permanent investments in other companies through the actions of the defendants, and with their knowledge, and with their knowledge at the time such representations were being made, such as those made in the letter to Mr. Richmond by the Defendant Twombly; that would show the falsity of the representation that they were liquidating, and show the intent with which the defendants were performing those acts.

\* \* \* \* \*

I concede that we are not entitled to, and that it is no issue here, as to the good or bad management of those concerns, but I do think we are entitled to show the nature of the investments made and type of concern to which it was made, and by 'type' I mean the nature of the business which was being conducted by that concern. For [473] instance, the fact that one concern was in the business of manufacturing dog food.

\* \* \* \* \*

The Court: Now, taking up first this paragraph at the bottom of page 4 in which the allegation is made; 'that the said defendants at all times represented and pretended that said First Security Deposit Corporation was organized for the purpose of and was duly and actively engaged in the liquidation of the said assets received by it from the Railway Mutual Building and Loan Association; whereas in truth and in fact the defendants, and each of them, then and there well knew that no such liquidation was in fact being carried into effect and the said defendants were, as hereinabove alleged, converting said assets to their own use and benefit,' now that allegation covers both the assets that went from Railway Building and Loan into the Metropolitan Trust and also into Investment Finance. Now, I am inclined to think that insofar as that allegation is concerned, that the plaintiff's proof is complete by the showing of the books and records of Investment Finance which disclose investments in these various corporations and that it is unnecessary to go further into those corporations as I see it at the present time.

Now, so far as the intent is concerned, however, I am inclined to think that the position of the plaintiff is sound, that they are entitled in a case of this type to show the investment of the funds of Investment Finance in these corporations A to Z. I think they would be en-



titled to show the character of business in a general way connected by those corporations by the articles of incorporation if they disclosed them or by any other legitimate means to show, for example, that one was a dog and cat food company, [474] that one was an oil well company, that another one was a bank, and so on.

I am inclined to think also that they would be entitled to show that Investment Finance made such a substantial interest in these corporations or some of them as to give them either control or a very great influence in the management of those corporations and that at the request or by acquiescence or ratification Investment Finance Board either permitted or justified the occupation on the board of directors of these various corporations of Investment Finance directors in order that they might have a say in the management of those corporations.

I am inclined to think that as a part of that intent applicable at least to those directors who actually went in as directors of these corporations A to Z, they would be entitled to show the personal interest of those directors in the stock of the corporations outside of the interest which Investment Finance itself had.

I do not believe that they would be entitled to introduce any evidence having to do with the legitimate or illegitimate, good or bad, wise or unwise management of those corporations; that is not an issue here.

\* \* \* \* \*

Mr. Lawson: Your Honor, I was wondering whether or not your Honor had in mind the succeeding paragraph to the one that has just been referred to at the bottom of page 4, which is at the top of page 5. Now, there is the specific paragraph. It states that the moneys instead of being put in loans secured by legal investments, which was the representation made to the investors, was loaned without security to the Investment Finance Company. Now, it seems to me that in line with the observation that your [475] Honor made in regard to the liquidation, that is, that the records themselves show that, according to the contention of the plaintiff, that it was not, let us say, in liquidation, now, that is finally decided.

Now, the same applies to the lending of money from the First Security to the Investment Finance Company, because it puts a very sharp limitation on that. And that is that instead of lending the money and securing it by legal investments, large sums of money belonging to the said corporation, that is, to the First Security, were loaned and diverted to the defendants and to Investment Finance Company for the use and benefit of the defendants without any security whatsoever.

Now, I take it that we are entitled to rely upon that allegation in the indictment. In other words, if that is a violation, it is complete upon

the lending of the money without security to the Investment Finance Company.

The Court: Well, \* \* \* is that one representation false in fact made as a part of the scheme to defraud or the conspiracy to defraud and in carrying into effect the agreement of conspiracy or the agreement to defraud is not exclusive of another, that in the paragraph 4 the charge is made that there was to be liquidation. That is one charge.

Now, there is another charge which seems on its face to be conflicting with the prior charge, but we must keep in mind that these are representations made by the defendants to those persons intended to be defrauded, both of which the plaintiff claims were fraudulent, they were untrue, so that the fact that they were inconsistent doesn't interfere with the propriety of their being so charged in the indictment. [476]

First they charge that representations are made by the defendants that there were to be no investments in effect. There was to be merely liquidation. Then they charge that the defendants represented that the First Security 'would and did loan or advance money only upon security or properties theretofore approved as legal investments by the Superintendent of Banks or the Commissioner of Corporations of the State of California; whereas in truth and in fact, as the defendants, and each of them, then and there well knew, large sums of money and property belonging to the said

corporation were loaned and diverted to the defendants and to Investment Finance Company \* \* \*.' While on the face of them they seem inconsistent I don't feel that that is any valid defect in the indictment.

\* \* \* \* \*

Mr. Lawson: Except that this indictment is a criminal document, of course, and the defendants are entitled to every favorable construction. That is, where there appear to be any conflicts of any kind whatsoever, that that construction which is favorable to them must be the construction placed upon the document. That goes to every intendment and every part of the indictment. I would say also in line with the observation that your Honor made that that paragraph at the bottom of page 4 in connection with the liquidation of the assets could apply to both the collateral bonds and to the stock of the First Security.

The evidence in this case so far, and Mr. Campbell will not controvert it, up to the end of the case, will be that there was a liquidation of the trust That stands up monumental. It is there. There isn't any question but what there has been a liquidation and that comprises [477] by far the major part of all of the assets involved.

The Court: Is a part of your defense conceivably this: That liquidation doesn't mean liquidation for cash, under conditions as they existed during the life of this corporation,

liquidation for cash might have been impossible and there had to be liquidation by indirection. You have a piece of real property you want to get rid of. You have to swap it for a drug store and a pearl necklace and a cow and a horse. Then you swap the cow for something else, and the horse for something else, and you gradually liquidate. You may have to run the drug store in the process of liquidation and still be liquidating. That may be your intent.

Mr. Lawson: I don't know whether I have made my point very clear, your Honor, in regard to a charge in the indictment, that we cannot be shot at with a shotgun. We are entitled to be shot at with a rifle if you are going to shoot at us.

The Court: If you can't be shot at with a shotgun in a conspiracy indictment, an indictment of this type, I don't know what a shotgun is because that is the very nature of the charges.

Mr. Lawson: I think, your Honor, that that illustration is still good because we are entitled to know and rely upon the exact charge of what the conspiracy is and the conspiracy charged in this indictment specifically limits the funds that were transferred from the First Security Deposit Corporation to the Investment Finance Company to funds that were advanced without any security and in violation of the promise to the investors that it would be in the form of legal investments.



Now we get back of that and we take in one step [478] further. We say that not only was it lent without any security, but the defendants took this money and put it into various enterprises.

Regardless of what counsel of the Government might say, we all can well appreciate that back of this there lurks the danger, not only the danger, but I would say it is almost a certain result that the jury are bound to be prejudiced. They can't help it. Not only that, but we are not in a position to properly defend ourselves.

\* \* \* \* \*

The Court: \* \* \* I have ruled on that and I don't want any further argument \* \* \* I will give you all an exception to the ruling that I have made on what I proposed to do with the admissibility of the evidence."

(Jury returns.) [479]

---

DELLA P. TALAMANTES,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I am the Mother of Jack Winston; he and I were investors of the Railway Mutual Building and Loan Association.

(It was stipulated that her son was a minor and that she acted in his behalf as Guardian.)

"Mr. Adams: I want to object to any testi-

(Testimony of Della P. Talamantes.)

mony from this witness on the ground that it is immaterial to any of the issues of this case.

The Court: Same objection, same ruling.

Mr. Irwin: That will go to all her testimony.

The Court: Yes.

Mr. Lawson: As to all defendants.

The Court: Yes.

Mr. Irwin: Exception.

Q. Mrs. Talamantes, as guardian of your son Jack Winston, did you have submitted to you a plan from the Reorganization Committee of the First Security Deposit Corporation inviting you to accept their plan and exchange your securities, which you then held in the——

Mr. Adams: Objected to as leading and suggestive, your Honor.

The Court: Well, it is a preliminary question.

By Mr. Crawford:

Q. In which there was submitted to you a plan by the Reorganization Committee of the First Security Deposit Corporation? Was there such a plan submitted to you, Mrs. Talamantes?

A. I think there was a printed plan.

Mr. Butler: Just a minute. I object to this and move to strike the answer on the grounds it is hearsay as to [480] the defendant Cronk; no proper foundation laid for anything, if he is referring to a document.

The Court: Objection overruled.

(Testimony of Della P. Talamantes.)

Mr. Adams: Exception.

Q. Mrs. Talamantes, I will ask you if you exchanged your securities of the Railway Mutual Building and Loan Association to the First Security Deposit Corporation—First Security Deposit Corporation after there had been submitted to you the plan which I just asked you about.

A. I think I did. I am a little hazy about it. I have seen the plan before that.

Q. After you saw the plan, Mrs. Talamantes, did you then exchange your securities that you then held in the Railway Mutual Building and Loan Association to the First Security Deposit Corporation?

A. Some little time later.

Q. And did you receive in exchange for your securities from the First Security Deposit Corporation the following security: A-2463 cumulative bond, five year, in the face value or sum of \$387.23?

Mr. Lawson: Just a moment, your Honor, before the witness answers that question. I thought counsel was going to follow that up and show us what the plan was. Now he says you have seen a plan. What is the plan? I don't know what he refers to.

The Court: You can't try his case. You have a right to cross examine. He has asked for a plan and she said, 'Yes.'

(Testimony of Della P. Talamantes.)

Mr. Irwin: I object to that as not the best evidence, calling for a conclusion.

The Court: Well, if she doesn't know what she received, there is nothing technical about that, if she [481] received a bond with that number on it, she certainly knows it. She doesn't have to be any expert accountant or a lawyer to tell us. Objection overruled.

Mr. Irwin: Exception, please.

The Court: What you mean is, you got a piece of paper with that number on it, and that you believed it to be a bond?

The Witness: Yes.

Mr. Irwin: Your Honor, while that is being examined, might that question where she was asked about the plan, if she received the plan, just for the purpose of interposing an objection, might it be considered stricken? There are several objections that I didn't repeat at that time. Might that be considered stricken so that the objection might be interposed that it calls for a conclusion, if she received the plan, and not the best evidence? Might that be considered?

The Court: When you said, 'the plan,' you are referring to any particular plan, or just to a plan of reorganization?

The Witness: Just a plan of reorganization.

The Court: The objection will be overruled. Exception."

(Testimony of Della P. Talamantes.)

The witness further testified: I think I received plaintiff's Exhibit 182, I couldn't swear to it, it hasn't any marks on it I could say about. The envelope isn't with it but I think it is the one I received. To my best recollection I received such a letter through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 182, to which ruling of the Court, the defendants duly noted an exception.) [482]

The witness further testified: That she received the letter, plaintiff's Exhibit 183 for identification, through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, marked plaintiff's Exhibit 183.)

The witness further testified: That she received plaintiff's Exhibit 184 for identification through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 184.)

The witness further testified: That she received plaintiff's Exhibit 185 for identification through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 185.)



(Testimony of Della P. Talamantes.)

The witness further testified: That she received plaintiff's Exhibit 159 for identification through the mail; it was addressed to her son and she opened it; that it came in an envelope.

"Mr. Adams: If your Honor please, after the last letter was introduced, your Honor said the same objection and same ruling. Is that the way we are to carry it, or under the blanket ruling?"

The Court: Either way.

Mr. Adams: It doesn't make any difference to me.

The Court: It is admitted subject to the same objection and same ruling."

(Said letter was received in evidence over the objection [483] that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 159.)

The witness further testified: That she received plaintiff's Exhibit 166 for identification through the mail. The pencil notations on the envelope were placed there by me. To the best of my recollection, that is the envelope.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 166.)

"Mr. Crawford: I am reading from plaintiff's Exhibit 182, a letter on the letterhead of the First Security Deposit Corporation, 415

(Testimony of Della P. Talamantes.)

South La Brea Avenue, Los Angeles, California, dated June 22, 1937, addressed to Mrs. D. P. Talamantes, guardian of Jack Winston, a minor, 1820 Acacia Street, Alhambra, California:

‘Dear Madam:

We regret that we find it necessary to exercise our rights as set forth in our bond obligations to extend the maturity date on collateral trust bonds due November 1, 1937.

In accordance with the foregoing the Board of Directors of this corporation at its regular meeting held June 16, 1937, unanimously adopted a resolution to the effect that all record holders of collateral trust bonds maturing November 1, 1937, shall be notified that the maturity date of said certificates has been extended not to exceed eighteen months. This constitutes your formal notice thereof. [484]

Yours very truly,

FIRST SECURITY DEPOSIT  
CORPORATION,

(Signed) FLORENCE LONG,

Assistant Secretary.’

Now, reading plaintiff’s Exhibit 183, a letter on the letterhead of the Investment Finance Company, 415 South La Brea Avenue, Los Angeles, May 16, 1938, addressed to Mrs. D. P.

(Testimony of Della P. Talamantes.)

Talamantes, 1820 Acacia Street, Alhambra,  
California:

‘Dear Madam:

You hold securities of the First Security Deposit Corporation (now in process of liquidation), Bond No. A-2463 in the amount of \$387.23 in the name of Jack Winston, a minor, and we are able at this time to obtain for you \$251.69 on same.

Please present this bond for payment, or if you prefer, take it to your bank, endorse by yourself as guardian, together with then enclosed affidavit property executed before a notary and draw a draft on us for this amount through the Duns-muir and Wilshire Branch of the Bank of America, Los Angeles.

This however, is subject to your acceptance within thirty days.

Yours very truly,

Investment Finance Company

By (Signed) C. L. Cronk.’

Reading now from plaintiff’s Exhibit 184, a letter on the letterhead of First Security Deposit Corporation, 415 South La Brea Avenue, dated July 17, 1937, as follows:

‘To Our Bondholders:

From the time of the organization of this company, it has proceeded with an orderly

(Testimony of Della P. Talamantes.)

liquidation in an effort to obtain the maximum recovery for the out- [485] standing bondholders of the corporation. In the natural course of events, it will be some time subsequent to 1942 before this is accomplished.

In view of the present labor conditions and the governmental attitude toward the taxation of corporations, it is problematical whether the liquidation of the company should be further prolonged. Operating overhead cannot possibly be reduced as rapidly as the company income decreases. Under the circumstances, it has been deemed advisable to contact our outstanding bondholders for the purpose of obtaining their recommendations with reference to future company policy.

For these reasons, I have been employed to conduct a survey of the bondholders of the First Security Deposit Corporation, and will very much appreciate the courtesy of an interview with you. In the near future, I will call upon you, or, if you prefer, I will see you at this office.

Yours very truly,

FIRST SECURITY DEPOSIT  
CORPORATION

By: C. L. CRONK.'

Reading plaintiff's Exhibit 185, a letter on

(Testimony of Della P. Talamantes.)

the letterhead of the Investment Finance Company, 415 South La Brea Avenue, Los Angeles, dated November 16, 1937, addressed to Mrs. D. P. Talamantes, 1820 Acacia Street, Alhambra, California.

‘Dear Mrs. Talamantes:

You hold securities of the First Security Deposit Corporation, Bond No. A-2463 in the amount of \$387.23, in the name of Jack Winston, a minor, and we are able to obtain for you at this time \$271.06 on same.

[486]

Please present this bond for payment, or if you prefer, take it to your bank, endorse by yourself as guardian, together with the enclosed affidavit properly executed before a Notary and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America, Los Angeles.

This however, is subject to your acceptance within ten days.

Yours very truly,

INVESTMENT FINANCE  
COMPANY

C. L. CRONK.’

Reading plaintiff’s Exhibit No. 159, a letter on the letterhead of the Investment Finance Company, 415 South La Brea Avenue, Los Angeles, California, July 1, 1938, addressed to



(Testimony of Della P. Talamantes.)

Jack Winston, 1820 Acacia Street, Alhambra, California:

‘You hold securities of the First Security Deposit Corporation (now in process of liquidation), Bond No. A-2463 in the amount of \$387.23, and we are able to obtain for you \$290.42 on same.

Please present this bond for payment, or if you prefer, take it to your bank, endorsed by yourself before witness, together with the enclosed affidavit properly executed before a notary, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America, Los Angeles.

This, however, is subject to your immediate acceptance.

Yours very truly,

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.’

Reading plaintiff’s Exhibit No. 166, a letter on the [487] letterhead of the Investment Finance Company, 415 South La Brea Avenue, Los Angeles, California, dated October 31, 1938, addressed to Mrs. D. P. Talamantes, 1820 Acacia Street, Alhambra, California:

‘Dear Madam:

The undersigned is completing his work in connection with the liquidation of the

(Testimony of Della P. Talamantes.)

First Security Deposit Corporation on November 25, 1938. Under the circumstances, this will be my last communication to you in connection with this matter.

You hold a collateral trust bond of the First Security Deposit Corporation, No. A-2463, in the principal amount of \$387.23, under the name of Jack Winston, a minor.

I am in a position to make you an offer of \$329.14 for said bond, provided the sale is consummated on or before November 15, 1938.

Either communicate directly with me, or send the bond properly endorsed, together with the enclosed affidavit properly executed by a notary, to the Dunsmuir and Wilshire branch of the Bank of America, of this city, and a draft in the above amount will be honored.

Yours very truly,

C. L. CRONK.' '' [488]

The witness further testified: That she did not finally sell her securities to the Investment Finance Company, or the First Security Deposit Company. That she does not remember receiving any correspondence or word from either the First Security Deposit or the Investment Finance Company calling in her securities subsequent to the receipt of the last letter, Plaintiff's Exhibit 166, dated October 23,

(Testimony of Della P. Talamantes.)

1938. I do not now have my securities. I collected it. It was paid. The bond matured and was paid. I received the face value of my security.

(It was stipulated that the bond referred to by the witness was called in and paid, in the manner she testified to, on May 2, 1939.)

---

F. W. KIDDER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I am a Doctor with offices in the Pacific Electric Building; I was an investor in the Railway Mutual Building and Loan Association; while an investor there I exchanged my securities for the First Security Deposit Corporation. I don't remember the certificates, just the number of bonds I received. I have 30 shares of common stock and the amount of bonds I only remember by the price I sold them for.

“Mr. Butler: I object to the testimony of this witness on the ground that it is hearsay and incompetent as to the defendant Cronk; and I take it that that is a running objection to all of his testimony while he is on the stand.

The Court: It may be deemed to be the subject of such [489] objection, and the objection is overruled; the same ruling.

Mr. Irwin: And the objection of immaterial.

(Testimony of F. W. Kidder.)

The Court: The same objection as to all defendants.

Mr. Adams: And we have the running objection of hearsay, and not material to the defendant Cronk?

The Court: That is correct."

The witness was shown a form letter dated November 15, 1932, signed "First Security Deposit Corporation, C. E. Perkins." And a copy of a letter dated December 22, 1937, signed "Investment Finance Company, by C. L. Cronk," and asked whether or not he received the original of said letter, and answered, "I wouldn't know, it has been a long time ago and I can't remember. I know I received some letters but I wouldn't remember as to the particular ones."

The witness further testified: That he received some offers to buy his securities. That he did not recall from whom the offers were received. That he threw it in the waste paper basket with other advertisements.

The witness further testified: That a person purporting to represent either the Investment Finance Company, or the First Security Deposit Corporation called at his office. That he did not remember the date or the year, or the party's name. That he knows the defendant Joseph L. Smale.

The witness further testified: I had a conversation with Mr. Smale but I don't remember if it had any reference to this time of the letter; I don't re-

(Testimony of F. W. Kidder.)

member where the conversation was held. As far as I remember, no one else was present. I asked him a question about securities. I asked him if he thought it would be well to sell them. He said it was up to me, but he thought it would probably be a good plan to keep them. I finally sold my securities, but I don't know who I sold them to.

The witness further testified: That the endorsement on the [490] check, plaintiff's Exhibit 186 for identification, was his. That it must be the check he received for the sale of his securities. That he thinks the check was given to him in his office by Mr. Cronk.

(Said check was received in evidence over the objection of the defendants, that no proper foundation was laid for its introduction. Said exhibit was marked plaintiff's Exhibit 186 for identification, and separately certified pursuant to stipulation and order of Court.)

The witness further testified: That he did not know the name of the person who delivered the check to him; the check was delivered to me in my office. If his signature is on it, I suppose he is the man I don't know. I did not prior to the receipt of that check have any conversation with C. L. Cronk.

“Mr. Crawford: At this time we wish to read from plaintiff's Exhibit 45, which is the purchase order of the Investment Finance Company, reading from page No. 1033:



(Testimony of F. W. Kidder.)

‘Purchase Order, Investment Finance Company, 415 South La Brea Avenue, Los Angeles.

‘To Dr. F. W. Kidder.’

In the first column ‘A-1215; quantity wanted, 700; description, full paid—prior; price \$560; unit No. 80;

A-2247; quantity wanted, \$26.63; accumulative—prior; price, \$21.30; unit, 80.

A-5175; quantity wanted, 100; full paid—non-prior,’ with the initial of ‘F. W.’; price, \$80; unit, 80.

A-6971; quantity wanted, 60; cumulative—non-prior; \$48; unit, 80.

A-738; two shares preferred A; price \$4; unit \$2;

B-310; 40 shares preferred B; price \$80;

B-308; wanted 10 shares preferred B; Ralph G. Gordon and Mrs. Clayton Kidder; price, \$20; [491]

A-2057; quantity wanted, \$215.87; cumulative—non-prior.’ And the name is ‘Bessie Chobotsky; \$172.96.’

There is one correction. Where I read the initials ‘F. W.,’ that is followed by the name ‘Kidder.’

‘September 14, 1938, Cronk; check No. 244.’

‘The initials are ‘E. C. T.,’ ‘J. A. T.,’ and ‘R. W. S.’

(Testimony of F. W. Kidder.)

Will it be stipulated that those are the initials of the defendants?

Mr. Irwin: So stipulated, subject to correction. 'R. W. S.' is Mr. Starr, 'E. C. T.' is Mr. Thomas."

---

GRACE G. BENN,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I was an investor in the Railway Mutual Building and Loan Association.

"Mr. Adams: May we get in our regular objections your Honor, on the grounds of hearsay and non-materiality \* \* \* \* ?

The Court: As to all defendants same objections, same ruling and exception.

Mr. Irwin: May the same understanding be had with this witness as the objections made at the start, go all the way through with her testimony.

The Court: Very well."

The witness further testified: That she received plaintiff's Exhibit 187 for identification, a letter dated November 15, 1932, through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and [492] marked plaintiff's

(Testimony of Grace G. Benn.)

Exhibit 187, to which ruling of the Court, the defendants duly noted an exception.)

“Mr. Crawford: At this time I will read to the jury plaintiff’s Exhibit 187, which is a letter on the letterhead of the First Security Deposit Corporation:

‘First Security Deposit Corporation  
Suite 323 Pacific Electric Building  
Sixth and Main Streets  
Los Angeles, California

November 15, 1932

Grace G. Benn:

We hand you herewith securities of this corporation as follows:

A-46 3 shares \$60.00

A-6048 Cumulative 221.66

These securities are delivered to you by this corporation on behalf of the Trustees under the Plan and Agreement and Declaration of Trust for the Reorganization of The Railway Mutual Building and Loan Association, dated November 27, 1931, and in conformity with said Plan and Agreement and Declaration of Trust, and your acceptance of these securities shall constitute delivery as contemplated under said Plan and Agreement and Declaration of Trust, and your acceptance of these securities shall constitute delivery as con-

(Testimony of Grace G. Benn.)

templated under said Plan and Agreement and Declaration of Trust:

Please return to us immediately the following:

1. The Trustees' Certificate (s) of Deposit which you now hold.

2. The enclosed identification card COMPLETELY filled out.

IMPORTANT:

The blue identification card is for your protection. Be sure to write your mother's maiden name in the [493] space provided for password.

Your signature (s) on the line provided at the bottom of the card must be exactly as written at the top of the card.

The Certificate (s) of Deposit and identification card above referred to **MUST BE RETURNED TO US PROMPTLY** as it is our only means of recognizing you for the payment of interest or dividends, or for the transfer of your securities. Envelope, properly stamped and addressed, is enclosed herewith for your use in returning same.

Very truly yours,

FIRST SECURITY DEPOSIT  
CORPORATION

C. E. PERKINS, Treasurer.' "

The witness further testified: That she received

(Testimony of Grace G. Benn.)

plaintiff's Exhibit 188 for identification along with the letter, plaintiff's Exhibit 187; that that card bears her signature in the right hand corner; that she returned the card in accordance with the instructions in the letter, plaintiff's Exhibit 187.

(Said card was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 188, to which ruling of the Court, the defendants duly noted an exception.)

“Mr. Crawford: At this time I will read to the jury plaintiff's Exhibit 188:

‘First Security Deposit Corporation

Name: Grace G. Benn The date: December 1, 1932.

Addressed: 2511 South Bronson, Los Angeles.’

I will omit the identification.

‘Securities: A-46 — A-6048.’

I hereby submit the foregoing for the purposes of [494] identification, and subscribe to the declarations and proxy printed on the reverse of this card.

‘Grace G. Benn.

2511 South Bronson Avenue

L. A.

Witness: B. G. Stevens.

5459 Brynhurst Avenue, L. A.’

And on the reverse side thereof the following:



(Testimony of Grace G. Benn.)

‘Joint tenancy: The securities of the First Security Deposit Corporation listed on the reverse side of this card are owned by the undersigned as joint tenants, and all monies credited to these securities, or any of them, or heretofore issue or credited, shall be received by the First Security Deposit Corporation under this declaration of joint tenancy, and by mutual agreement between each and all of us the receipt or acquaintance of any one of the undersigned shall be valid, and sufficient relief and discharge of the First Security Deposit Corporation of its obligations and accords under said securities. At the death of a joint tenant herein named, the First Security Deposit Corporation shall be notified at once, and the survivor or survivors must obtain the consent in writing of the State Comptroller or the County Treasurer to the delivery or transfer of such securities, the benefits and rights to the survivors, or survivor.

Proxy: I hereby appoint R. W. Starr, J. L. Smale, and E. C. Thomas, or any two of them acting in accord, as by proxy to vote my shares at all meetings at which I am not present, or have a subsequent proxy, for a period of seven years, unless revoked earlier. Those statements or conditions, verbal or written, other than here-

(Testimony of Grace G. Benn.)

in provided, shall be binding on the corporation.”

The witness further testified: That she received plain- [495] tiff's Exhibit 189 for identification through the mail.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 189.)

The witness further testified: That she received plaintiff's Exhibit 156 for identification through the mail at the house to which it is addressed; that it was in a sealed envelope.

(Said letter was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 156.)

The witness further testified: That she received plaintiff's Exhibit 163 for identification through the mail; the witness was asked whether or not the envelope, plaintiff's exhibit 163-A for identification, was the one in which the letter, plaintiff's exhibit 163 for identification, was received in, and answered that it was one of the envelopes she received. That all the letters came in envelopes similar to that.

(Said documents were received in evidence over the objection that the same were immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibits 163 and 163-A respectively.)

(Testimony of Grace G. Benn.)

The witness further testified: I had a number of telephone calls regarding the selling of my securities, but I don't recall just when they were. I couldn't tell you at any particular date. They were telephone conversations. The party called me. The conversations were off and on for about two years. That she had no conversation with Mr. Cronk after the receipt of the last letter, until she went to the office to sell her stock, but did write him a letter. I answered that letter by a letter. When I decided to sell my securities, I went over to the address on La Brea Street [496] and this party was in the office and I sold my securities that afternoon. You may think that I meant Mr. Cronk was in the office, but it was another party. I don't recall that I ever saw Mr. Cronk. I didn't see any of them connected with the association only that one time and that is the day that I went out there. I think the gentleman I talked to that time was Mr. Ireland. At that time I discussed the purchase of my securities.

"The Court: Will you in the brown suit stand up?

(The gentleman arose as requested.)

The Court: Is that Mr. Ireland?

The Witness: I don't think so.

The Court: Will you stand up?

(The gentleman referred to arose, as requested.)

The Court: Is that Mr. Ireland?

(Testimony of Grace G. Benn.)

The Witness: No.

The Court: Will you stand up?

(The gentleman referred to arose, as requested.)

The Court: Is that Mr. Ireland?

The Witness: I don't think so. I just saw him the one time.

Mr. Lawson: May the record show that is Mr. Ireland.

The Court: You are Mr. Ireland, are you not?

The Defendant Ireland: Yes, your Honor.

The Court: Stand up again. Is that the man you talked to, if you know?

(The Defendant Ireland arose, as requested.)

The Witness: No, I don't think so."

The witness further testified: That after she had this conversation, she sold her securities. That plaintiff's exhibit No. 190 for identification, a check dated December 15, 1938, payable to herself in the sum of \$194.41, signed, "Investment Finance Company, by A. R. Ireland," bears her endorsement signature. That was [497] the check she received at the time in payment for her securities.

(Said check was received in evidence over the objection that the same was immaterial, hearsay and no foundation laid, and marked plaintiff's Exhibit 190.) [498]

"Mr. Crawford: At this time, I want to read to the jury plaintiff's Exhibit 45, page

(Testimony of Grace G. Benn.)

1076 of the purchase order of the Investment Finance Company, page 1076.

‘Purchase Order, Investment Finance Company,

‘415 South La Brea Avenue,

‘Los Angeles, California

‘To Grace Benn:

‘A-6048; quantity wanted 221.66; cumulative—non prior; price, 188.41; unit, 85.’

‘A-46; 3 shares Preferred A; price, \$6.00; unit \$2.00.’ Dated 12/15/38; check No. 2294, Ireland check, with the initial ‘R. W. S.; J. H. E., E. C. T.’

(A stipulation was entered into that the bonds sold by witness of the plaintiff had not yet matured at the time of their sale.).

---

FRED O. MORSE

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am a retired railroad man. Prior to 1932 I was an investor in the Railway Mutual Building and Loan Association.

“Mr. Butler: At this time I object——

The Court: The same objections that have been made to the other investors who have been on the stand may be deemed to have been



(Testimony of Fred O. Morse.)

made to the testimony of this witness; the same ruling; same exception; same reservation as to the motion to strike. For all defendants.

Mr. Butler: A running objection.

The Court: Yes. The objection is hearsay; it is not material; it hasn't been properly connected up.

Mr. Irwin: And the additional one, your Honor, that there has been no foundation laid.

The Court: That the corpus delicti has not been shown, yes. [499]

The witness further testified: That he received a document entitled "Plan and Agreement of Reorganization," similar to plaintiff's Exhibit 131 through the mail; I don't remember the date I remember the date I received one of those.

The witness further testified: That he received a letter through the mail dated December 10, 1931 on the letterhead of the reorganization committee identical with that of plaintiff's Exhibit 132.

The witness further testified: That he received a letter on the letterhead of the Railway Mutual Building and Loan Association dated December 15, 1931 addressed to "All Members" identical with that of plaintiff's Exhibit 133.

The witness further testified: That he received a letter dated April 4, 1932 and a letter dated October 5, 1932, both on the letterhead of the First Security Mortgage Corporation through the mail and that said letters so received by him were respectively identical with plaintiff's Exhibits 134 and 135.

(Testimony of Fred O. Morse.)

The witness further testified: That after receiving the document headed "Plan and Agreement of Reorganization for the Railway Mutual Building and Loan Association," plaintiff's Exhibit 131, he exchanged the securities which he held in the Railway Mutual Building and Loan Association for securities of the First Security Deposit Corporation; that he received the original of plaintiff's Exhibit 191 for identification, a letter dated November 15, 1932 and that at the time of the receipt of that letter he received the securities referred to in the letter. (Said letter was received in evidence and marked plaintiff's Exhibit No. 191. Said letter is a form letter similar to that of plaintiff's Exhibit 187).

The witness further testified: That accompanying the letter, plaintiff's Exhibit 191, was a blue identification card similar to that contained in plaintiff's Exhibit 34 and thereafter signed the card and mailed it to the First Security Corporation on or about December 7, 1932. (The card referred to as a part of [500] plaintiff's Exhibit 34 was then separately identified and received in evidence as plaintiff's Exhibit 192). Said exhibit is separately certified pursuant to stipulation and order of Court.)

The witness further testified: That he received plaintiff's Exhibit 193 for identification, a letter dated July 17, 1937, on the letterhead of the First Security Deposit Corporation, through the mail. (Said letter was offered and received in evidence and marked plaintiff's Exhibit No. 193. Said Ex-

(Testimony of Fred O. Morse.)

hibit is identical with plaintiff's Exhibit 184 hereinabove set forth.)

The witness further testified: It is my recollection that following receipt of plaintiff's Exhibit 193 I personally had a conversation with the defendant C. L. Cronk at my home. Besides myself, my wife was present. The substance of the conversation was that the company would have to liquidate the—what shall I call it—the bonds or the assets of the company in order to complete the work that they were organized for. As I understand that, the liquidation of the assets of the company; he told me that probably holding the bonds until 1942 when they would become payable, that possibly we wouldn't be able to realize the amount of the bonds; that was the gist of the conversation. I recall nothing else that he said particularly.

“Q. Do you recall whether or not anything was said relative to the company operating at a profit or loss.

Mr. Butler: I object to that on the grounds that it is leading and suggestive.

The Court: Overruled.

Mr. Lawson: Exception.

The Witness: I assume you mean by that whether they were making money or were not making money.

Mr. Campbell: That is right.

The Witness: I have told you the gist of the conversation.

(Testimony of Fred O. Morse.)

Mr. Campbell: What was said in that regard?

A. That the company was operating at a loss.

Q. What did Mr. Cronk tell you about operating at a loss? [501]

A. That the expenses were accumulating faster than the income.

The witness was again asked whether or not anything was said relative to the ability of the company to pay the face amount of the bonds, and answered:

“I think I have already stated that the possibility of the bonds not being paid in full at the expiration of the time. Mr. Cronk came to my house a second time. I received no correspondence between his first and second visit. No one but my wife was present at the time of this second conversation with Mr. Cronk. My recollection of this conversation is that Mr. Cronk said that the company could handle the bonds better than an individual could and get more out of them. I recall no offer being made in these conversations for the purchase of my bonds; the only offer was written in the letter, plaintiff’s Exhibit 158 for identification. I received plaintiff’s Exhibit 158 for identification through the mail; it was contained in an envelope which was addressed to me and my best recollection is there was a cancelled postage

(Testimony of Fred O. Morse.)

stamp on the envelope.” (Said letter was received in evidence and marked plaintiff’s Exhibit 158).

“Mr. Campbell: Reading from this letter (Exhibit 158) on the letterhead of the Investment Finance Company, June 28, 1938:

“Fred O. Morse  
‘1312 Bates Avenue  
‘Los Angeles, California.

‘Dear Sir:

‘You hold securities of the First Security Deposit Corporation now in process of liquidation, Bond No. A-1260 in the amount of \$1000; A-2309, amount \$100; and we are able at this time to obtain for you \$825 [502] on same.

‘Please present these bonds for payment, or if you prefer, take them to your bank, endorsed by yourself before witness and draw a draft on us for this amount through the Dunsmuir-Wilshire Branch of the Bank of America.

‘This, however, is subject to your immediate acceptance.

‘Yours very truly,

‘INVESTMENT FINANCE  
COMPANY

‘By C. L. CRONK.’

Written in ink at the bottom of the letter, ‘If



(Testimony of Fred O. Morse.)

you wish any more information, let me know when I can see you. C. L. C.'

The witness further testified: I received plaintiff's Exhibit 161 for identification through the mail; it was contained in an envelope addressed to me at the address shown in the letter; presumably there was a cancelled postage stamp on such envelope; that is my best recollection; I did not preserve the envelope in which the letter was received. Neither did I preserve the envelope in which plaintiff's Exhibit 158 was received. (Said letter was received in evidence and marked plaintiff's Exhibit 161).

'Mr. Campbell: Reading from plaintiff's Exhibit 161, on the letterhead of the Investment Finance Company, July 25, 1938.

'Mr. Fred O. Morse

'1312 Bates Avenue

'Los Angeles, Calif.

'Dear Sir:

'Will you be kind enough to extend to me the courtesy of an interview at your early convenience. [503]

'For your own information, I think this would be advisable.

'Thanking you in advance for the favor, I am

'Very truly yours,

'INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.'

(Testimony of Fred O. Morse.)

The witness further testified: That he did not have a further interview with Mr. Cronk after receiving plaintiff's Exhibit 161; that he had no further conversations with Mr. Cronk according to his recollection. I received the letter, plaintiff's Exhibit 164 for identification, through the mail; it was contained in an envelope addressed to me at the same address as shown in the letter. I don't recall if there was a cancelled postage on that envelope to the best of my recollection; presumably there was; I did not preserve the envelope. The letter referred to was received in evidence and marked plaintiff's Exhibit 164.)

The witness further testified: That he received the letters, plaintiff's Exhibits 194, 195, 196 and 197 for identification through the mail. (Said letters were received in evidence and marked plaintiff's Exhibits 194, 195, 196 and 197 respectively).

The witness further testified: That he did not accept any of the offers set forth in the letters plaintiff's Exhibits 194 to 197, inclusive. [504]

“Mr. Campbell: Reading first from plaintiff's Exhibit No. 194, on the letterhead of the Investment Finance Company, October 8, 1937:

(Testimony of Fred O. Morse.)

‘Mr. Fred O. Morse  
1412 Bates Avenue  
Los Angeles, Calif.

Dear Mr. Morse:

‘According to the records of the First Security Deposit Corporation, you hold Bond No. A-1260 in the amount of \$1,000.00, Bond A-2309 amount \$100.00 and Certificate A-832 for eighteen shares Preferred, and we are able at this time to obtain for you \$806.00 on same.

Please present these for payment, or, if you prefer, take them to your bank, endorse by yourself before witness, and draw a draft for this amount on us through the Dunsmuir and Wilshire Branch of the Bank of America.

This, however, is subject to your acceptance within ten days.

Yours very truly

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.’

Plaintiff’s Exhibit 195, dated November 1, 1937, on the letterhead of the Investment Finance Company, 415 South La Brea Avenue, Los Angeles.

(Testimony of Fred O. Morse.)

‘Mr. Fred O. Morse

1312 Bates Avenue

Los Angeles, California

Dear Sir:

You hold securities of the First Security Deposit Corporation, Bond No. A-1260 in the amount of \$1,000.00, Bond A-2309 amount of \$100.00, Certificate A-832 for eighteen shares Preferred, [505] and we are able at this time to obtain for you \$806.00 on same.

Please present these for payment, or if you prefer, take them to your bank, endorse by yourself before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America.

This however, is subject to your acceptance within ten days.

Yours very truly

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.’

Plaintiff’s Exhibit No. 196 upon the letter-head of Investment Finance Company, dated December 31, 1937.

(Testimony of Fred O. Morse.)

‘Mr. Fred O. Morse

1312 Bates Avenue

Los Angeles, California

Dear Sir:

You hold securities of the First Security Deposit Corporation, Bond No. A-1260, in the amount of \$1000.00, Bond No. A-2309 amount \$100.00, and Certificate A-832 for eighteen shares Preferred, and we are able at this time to obtain for you \$806.00 on same.

Please present these securities for payment, or if you prefer, take them to your bank, endorse by yourself before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America.

You will recall that the First Security Deposit Corporation was organized to liquidate a large portion of the assets of the Old Railway Mutual Building and Loan Association over a period of time to the best advantage of the depositors. It is my understanding had this not been done, the situation would in all probability [506] have been liquidated under a forced liquidation with its incidental low prices by the building and loan commissioner.

Furthermore, I feel that the gentlemen who have had charge of this corporation



(Testimony of Fred O. Morse.)

have done a splendid piece of work in bringing about a condition where we are able to obtain seventy cents on the dollar for the bonds.

In other words, you can obtain \$806.00 for your holdings, or wait approximately six and one-half years and take your chances on securing more out of what is left of the assets after over \$900,000.00 has already been liquidated.

This offer is good until February 1st, 1938.

Yours very truly,

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.'

Government's Exhibit 197, on the letterhead of Investment Finance Company, dated April 19, 1938.

"Fred O. Morse

"1312 Bates Avenue

"Los Angeles, California

"Dear Sir:

"You hold securities of the First Security Deposit Corporation, Bond No. A-1260 in the amount of \$1,000.00, A-2309 amount \$100.00 and Certificate A-832 for eighteen shares Preferred, and we are able at this time to obtain for you \$751.00 on same.

(Testimony of Fred O. Morse.)

“Please present these securities for payment, or if you prefer, take them to your bank, endorse by yourself before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America.

“This, however, is subject to your acceptance within thirty days.

“Yours very truly,

“INVESTMENT COMPANY  
COMPANY

“By C. L. CRONK.”

Plaintiff's Exhibit 158, on the letterhead of Investment Finance Company, dated June 25, 1938.

Fred O. Morse  
1312 Bates Avenue  
Los Angeles, California

Dear Sir:

You hold securities of the First Security Deposit Corporation (now in process of liquidation), Bond No. A-1260 in the amount of \$1000.00, A-2309 amount \$100.00, and we are able at this time to obtain for you \$825.00 on same.

Please present these bonds for payment, or if you prefer, take them to your bank, endorse by yourself before witness and draw a draft on us for this amount through

(Testimony of Fred O. Morse.)

the Dunsmuir and Wilshire Branch of the  
Bank of America. [507]

This however, is subject to your immediate acceptance.

Yours very truly,

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.'

Written in pen: 'If you wish any more  
information, let me know when I can see  
you. C. L. C.'

Plaintiff's Exhibit 164, upon the letterhead  
of the Investment Finance Company, dated  
October 26, 1938.

'Mr. Fred O. Morse  
1312 Bates Avenue  
Los Angeles, California

Dear Sir:

The undersigned is completing his work  
in connection with the liquidation of the  
First Security Deposit Corporation on No-  
vember 25th, 1938. Under the circum-  
stances, this will be my last communication  
to you in connection with this matter.

You hold collateral trust bonds of the  
First Security Deposit Corporation, Nos.  
A-1260 in the principal amount of \$1000.00,  
and A-2309 in the amount of \$100.00, to-  
gether with eighteen shares of Preferred  
stock of said corporation.

(Testimony of Fred O. Morse.)

I am in a position to make you a total offer of \$971.00 for said securities, provided the sale is consummated on or before November 15th, 1938.

Either communicate directly with me, or send your securities properly endorsed to the Dunsmuir and Wilshire Branch of the Bank of America, this city, and a draft on us in the above amount will be honored.

Yours very truly

C. L. CRONK.' '' [508]

The witness further testified: I received a letter from the corporation in June or July of 1939 stating that if I wished to turn in the bonds I would receive face value and interest to date. The letter I refer to is plaintiff's Exhibit 198 for identification. The date of that letter, July 7, 1939, refreshes my recollection as to the time I turned in my bonds. I received on that occasion the full face value plus interest for my bonds.

Cross Examination

By Mr. Irwin:

(Upon request the plaintiff produced a check dated August 9, 1939).

"Q. May I show to the witness a check, on it bearing the notation 'First Security Deposit Corporation,' dated August 9, 1939. May I direct the witness' attention to the endorsement on the back? I will ask you if that is your signature.

(Testimony of Fred O. Morse.)

A. That is my signature.”

(The check was received in evidence and marked defendant’s Exhibit J).

“Mr. Irwin: Check of the First Security Deposit Corporation of August 9, 1939, ‘Pay to the order of Fred O. Morse, \$1,172.92, First Security Deposit Corporation, by J. Howard Edgerton and Louise Phillips.’

And under ‘Description, date and amount,’ appears the following: ‘Bond A-1260, \$1,000, interest \$35; Bond A-2309, \$100, interest \$37.92; total \$1,172.92.’

Bearing the endorsement, as heretofore identified, and the cancellation as having been paid on August 11, 1939.”

The witness further testified: That he did not sell his 18 shares in the First Security Deposit Corporation, but still retains them. [509]

---

#### AUDRA D. JONES

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am the widow of Herbert C. Jones; prior to 1932 my husband and myself held certain securities of the Railway Mutual Building and Loan Association; we thereafter exchanged its securities for securities of the First Security Deposit Corpora-



(Testimony of Audra D. Jones.)

tion. The witness' attention was directed to a blue card, plaintiff's Exhibit 34, and testified that her signature appeared thereon. She does not remember when she received the card and signed the same.

Upon objection being made, the court stated:

"The same objection heretofore made to the testimony of these other investors may be deemed to be made as to all defendants at this time, and the same ruling."

The witness further testified: That she received the card and signed it somewhere along the time that it bears date. That her best recollection is that after signing the card, she forwarded it to the First Security Deposit Corporation.

"Q. Mrs. Jones, did you hold, you and your husband, the following securities of the First Security Deposit Corporation: No. A-798 for twelve shares of preferred A stock; No. A-6967 accumulative bond six year maturity, \$1,005.49; No. A-2239 accumulative bond six year maturity, \$4,242,

A. I think that is right."

The witness further testified: I received a letter in August 1937 asking me to call at the office and talk it over with them; I don't think I preserved that letter; as near as I can remember, the letter was signed by Mr. Cronk. After receiving the letter I went to the offices of the company out on La Brea. On the occasion I went to the offices of the company, I sold my securities. The witness

(Testimony of Audra D. Jones.)

was shown plaintiff's Exhibit 199 for identification, a check dated August 4, 1937 and signed "C. L. Cronk" [510] and testified that her endorsement appeared on the reverse side of the check; that she received the check on the date it bears. The check was received in payment for her securities; that was the full amount which she received. On the occasion I went to the offices and on which occasion I received this check I had a conversation with a man whom I supposed was Mr. Cronk.

"Q. Do you recognize the gentleman in the court room with whom you had conversation on that occasion?

A. I don't think I would.

Q. Well, will you look about the court room and see if you see him here?"

Thereupon the court directed each defendant successively to stand and inquired of the witness if such defendant was the person with whom she had the conversation and the witness in each instance replied "No" or "I don't think so."

---

### MARY WISELEY

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am the widow of George Wiseley; prior to 1932 my husband and I owned securities of the Railway Mutual Building and Loan Association;

(Testimony of Mary Wiseley.)

thereafter we exchanged them for securities of the First Security Deposit Corporation. They consisted of five bonds of \$500.00 each; and then there was one called a note, a 12-month note for \$50.73. I recall that the five \$500.00 bonds had a maturity date of November 1, 1942 and that the \$50.73 note had a maturity date of August, 1935.

“Mr. Adams: This is a new witness. At this time we wish to make our usual objection of hearsay and not material to the issues.

The Court: The objections may be deemed to be made; same ruling; as to all defendants.

[511]

Mr. Irwin: Exception.”

The witness further testified: That the \$50.73 note maturing in August 1935 was paid in full plus interest. That she subsequently disposed of her five \$500.00 bonds in the early part of 1938, to the First Security Mortgage Deposit Corporation; that at the time she disposed of them she received a check; that the check dated April 6, 1938, signed “C. L. Cronk” bore her endorsement. Plaintiff’s Exhibit 201 for identification, a check for \$1,875 is the check she received on or about April 6, 1938 for her bonds; that is the total amount she received. (Thereupon said check was received in evidence and marked plaintiff’s Exhibit 201 for identification. Said check is separately certified pursuant to stipulation and order of Court.)

The witness further testified: I have known Dr.

(Testimony of Mary Wiseley.)

Starr a good many years. Prior to my disposition of my bonds in the sum of \$1875 I had a conversation with Dr. Starr relative to the sale of my bonds. There was more than one conversation. The first conversation was quite a number of months before the sale. It was in Dr. Starr's office. I and my husband were patients of Dr. Starr. No one was present besides myself and Dr. Starr.

“Q. Will you relate what was said on that occasion with relation to the sale of your bonds? Stating in substance, if you do not recall the exact words.

A. Well, the wording was that they would offer me so much on the dollar.

Q. What did Dr. Starr say in that regard?

A. He said, ‘I would take that, if I were you.’

Q. What figure was said?

A. That was 75 cents on the dollar.

Q. What did he say about your taking it?

A. Well, he said his advice to me would be to take it, that he had a sister who was in the same thing, and he advised her to take it, 75 cents on the dollars.”

The witness further testified: At that time Dr. Starr stated they were going to liquidate; that I had better take the 75c because they were going to liquidate; that they felt they couldn't go on and pay the amount of interest; that they would

(Testimony of Mary Wiseley.)

have to liquidate. I had quite a number of conversations with Dr. Starr trying to see if I could get more than 75c. On these occasions I would say that I brought up the subject of the sale of my bonds because I was most interested in it. I am acquainted slightly with the defendant Twombly. I have only seen him in the office; it was probably a couple of months before I sold my bonds. I went to the office to talk to Mr. Twombly. Mr. Twombly simply said that he would advise me to take what was offered to me; that they wanted to liquidate and it might be that I would not do so well if I kept holding the bonds; it might be I couldn't get that much. I am only acquainted with the Defendant Cronk in a business way; he was the one that came to my house. The first occasion he came to my house was quite a few weeks or months prior to my selling the bonds; in that conversation he said the same as the others; advised me to accept this and was very anxious for me to accept it—that is what he stated. Mr. Cronk came to my house several times and called me over the telephone. The conversation was substantially the same on each occasion. I had a conversation with Mr. Cronk on the day I sold my bonds, and he said he couldn't advise me to hold on; that they were trying to get things straightened up to liquidate. I surrendered my securities on that day and received a check for \$1875.

“Mr. Campbell: I will read from Government's Exhibit 45.



(Testimony of Mary Wiseley.)

‘Purchase Order Record, Investment Finance Company. Order No. 971,’ dated April 6, 1938.

‘Mary L. Wiseley, A-1499; quantity wanted, [513] 2500; full paid—prior; price, \$1875.00; unit price \$75; 4-6-38; Cronk, Check No. 216,’ and the initials of ‘C. W. T., E. C. T.,’ and ‘R. W. S.’ ”

### Cross Examination

By Mr. Irwin:

The witness testified that defendant’s Exhibit K for identification bore her signature.

“Mr. Irwin: May the record show that I have directed the witness’ attention to Defendant’s Exhibit K, which is two certificates of deposit of the Railway Mutual Building and Loan Association, No. 1299, and No. 1300, bearing date of March 5, 1932.

The endorsement on the back bears the date of December 13, 1932.”

(It was thereupon stipulated that defendant’s Exhibits K and L for identification were interim certificates used after the date of deposit of the securities of the Railway Mutual and Loan Association and prior to the issuance of the securities of the First Security Deposit Corporation; that they are certificates of deposit received by the witness upon her depositing with the trustee the securities set forth in the certificates.). (Said documents were received in evidence and marked de-

(Testimony of Mary Wiseley.)

fendant's Exhibits K and L. Said exhibits are separately certified pursuant to stipulation and order of Court.).

The witness further testified: The \$50.00 note was paid with whatever interest was due on it quite some time prior to the transaction in connection with the sale of the five \$500.00 bonds. I received interest on these bonds at the rate of 6%. I received this interest from the First Security from the time the bonds were issued, twice a year right up to the time I sold them. (It was stipulated that the records reflect that the maturity date of the five \$500.00 bonds of this witness was November 1, 1942).

“Mr. Lawson: In connection with the last witness, Mr. [514] Campbell gave me these certificates of deposit relative to Herbert C. and Audra D. Jones, and I would like to have those marked for identification.” (Thereupon said documents were marked defendant's Exhibit M-1 to M-6 inclusive for identification.)

---

#### LELAND H. BIDLEMAN

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Prior to 1932 I was a depositor and security holder of the Railway Mutual Building and Loan Association.

(Testimony of Leland H. Bidleman.)

“The Court: Same objections as to this testimony on behalf of all the defendants may be deemed to have been made; the same ruling; subject to the same motion to strike.

Mr. Irwin: Exception.”

The witness further testified: That thereafter he exchanged securities which he had in the Railway Mutual Building and Loan into securities of the First Security Deposit Corporation; that his investment in the Railway Building and Loan Association was \$16,224.82; that in exchange he received from the First Security Deposit Corporation certificates and shares of stock in the same amount; that he has a record of the certificate numbers together with the amounts.

“Q. Will you state that?

A. A1053, 5000, 700; A 1044, 3000; A 5010, \$4,100.00; A 5011, 1600; that makes a total of \$14,400.00. Then I had——

Q. *Jus* a moment. Were all of those, which you have just described there, given to you in bonds?

A. They were in bonds, some of those were bonds, yes.

Q. Proceed. What other securities were you given?

A. A 48, 55 shares, that come to \$1100.00; A 67, 3 shares, \$60.00; A 4920, 20 shares, \$400.00, \$20.00 a share, 78 shares.” [515]

The witness further testified: That the total of

(Testimony of Leland H. Bidleman.)

the securities that he received from the First Security Deposit Corporation as shown on their face was \$16,224.82. I received plaintiff's Exhibit 162 for identification, a letter dated July 27, 1938 through the mail. At the time I received the letter it was enclosed in an envelope addressed to me at the address shown on the face of the letter; the envelope was post marked. I do not now have that envelope.

"Mr. Campbell: This will be offered as plaintiff's Exhibit 162.

Mr. Irwin: Your Honor, in addition to the other objections, that letter there was identified some time ago, I don't know whether we have the objections of materiality, and the foundation, as to this, or not."

"The Court: That objection will be deemed to be made on behalf of all the defendants, overruled, exception allowed, subject to a motion to strike.

Mr. Campbell: Reading plaintiff's Exhibit 162, on the letterhead of the Investment Finance Company, July 27, 1938:

'Mr. Leland H. Bidleman

'Route No. 2

'Little Falls, New York

'Dear Sir:

'Supplementing previous correspondence regarding the bonds and Preferred stock of the First Security Deposit Corporation which you hold, I am somewhat at

(Testimony of Leland H. Bidleman.)

a loss to understand why you have not written me, and thought perhaps you did not understand the situation.

‘In the first place, the First Security Deposit Corporation was organized in 1932 to handle the liquidation of the assets of the old Railway Mutual Building and Loan Association, and it is my understand- [516] ing had this not been done, the assets would have been liquidated by a receiver appointed by the building and loan commissioner at that time.

‘This corporation is now in the final stages of this liquidation. Special arrangements were made whereby we could obtain for you and Mr. Hicks the amount stated in my former letter. It gives you eighty cents on the dollar on the bonds and two dollars per share for the Preferred stock, which of course is secondary to the bonds. These bonds are due in 1942, and under the trust indenture they have an additional eighteen and four months or twenty-two months which would be about the middle of 1944.

‘In my opinion, the thing for you to decide is whether it would be to your advantage to cash these bonds at eighty cents or wait that length of time with the chance of realizing any more out of what is left of the assets after more than one million



(Testimony of Leland H. Bidleman.)

dollars worth of assets has been liquidated. It is my understanding further that such an amount of the assets have been disposed of to the extent that the income has been cut down where it is insufficient to meet the monthly operating over-head. Consequently, it seems to me that the smart thing to do is to complete the liquidation as soon as possible, rather than continue another six years with a monthly operating deficit, and it is due to this condition that we are able to obtain this price for your bonds, as you are one of the few remaining large holders.

‘If this does not explain the matter satisfactorily, please let me know, and if the offer is acceptable you may endorse the securities as indicated in my recent letter and draw a draft on the Investment Finance Company accordingly. [517]

‘In any event, the expression of your wishes in the matter will be greatly appreciated.

‘Yours very truly,

‘INVESTMENT

FINANCE COMPANY

‘By C. L. CRONK’ ”

The witness further testified that plaintiff's Exhibit 202 for identification, a telegram, was received by him on the date it bears, October 17, 1938.

(Testimony of Leland H. Bidleman.)

“Mr. Campbell: As plaintiff’s Exhibit 202A, I will offer a copy of the same telegram, to which is attached a pencil copy of the same telegram, bearing the signature ‘C. L. Cronk’, and the initials ‘O. K., J. A. T.’ under our stipulation as to signatures and initials.

I will offer this as plaintiff’s Exhibit 202A so that it may bear the same number.

I will now offer the first document in evidence as plaintiff’s Exhibit 202.

The Court: It may be received and so marked.

(Plaintiff’s Exhibit No. 202 and 202A were received in evidence.)

Mr. Campbell: These will be marked as 202 and 202A in evidence, is that correct, your Honor?

Mr. Campbell: Reading plaintiff’s Exhibit 202, telegram on the blank of the Western Union, addressed to

‘Leland H. Bidleman

‘Route 2,

‘Little Falls, New York.

‘Finishing my work November 1st. The recent offer [518] securities First Security Deposit Corporation still obtainable if accepted by above date, otherwise withdrawn. Draw draft as outlined in letter. Prompt reply will be appreciated.

‘C. L. CRONK.’ ”

(Testimony of Leland H. Bidleman.)

The witness further testified: That subsequent to the receipt of the telegram, I accepted the offer and that I received for my securities \$11,887.85. I received plaintiff's Exhibit 203 for identification, a letter on the letterhead of the Investment Finance Company dated December 5, 1936, through the mail. I received plaintiff's Exhibits 204 and 205 respectively, dated March 30, 1937 and March 28, 1938, for identification through the mail. (Said letters were received in evidence and respectively marked plaintiff's Exhibits 203, 204 and 205.)

The witness further testified: That he received plaintiff's Exhibit 167 for identification, a letter on the letterhead of the Investment Finance Company dated June 30, 1938 in the envelope attached, through the mail. (Said letter was received in evidence and marked plaintiff's Exhibit 167.) [519]

“Mr. Campbell: Plaintiff's Exhibit 203:

‘Investment Finance Company  
415 South La Brea Avenue  
Los Angeles, California

December 5, 1936.

Leland H. Bidleman or  
Grace Bidleman  
Route No. 2  
Little Falls, N. Y.

Dear Sir and Madam:

What is the present market value of my First Security Deposit Corporation bonds? Is it possible now for me to realize

(Testimony of Leland H. Bidleman.)

immediate cash and suffer no unfair loss? These and other questions, naturally arise in the minds of investors whose securities have been adversely affected by conditions through which we have been passing for the past few years. We want to assist you on the basis of the actual operating experience of the First Security Deposit Corporation. At this time we can offer to all bondholders in the First Security Deposit Corporation a cash market for their bonds, and would welcome an opportunity to talk this matter over with you.

‘Should you feel that you can make better use of money at this time, either in the making of other investments or in the meeting of current needs, rather than waiting and endeavoring to anticipate what economic events or happenings will occur between now and the time these bonds mature, we will pay you a fair price for your bonds. This is a matter strictly for your own judgment.

‘It undoubtedly will become necessary for the First Security Deposit Corporation to revamp the present operating set-up in order to cope with rapidly changing conditions, the fall in interest rates, and increased taxes. These are conditions over which neither you nor the First Security

(Testimony of Leland H. Bidleman.)

Deposit Corporation have any control.

[520]

‘Our sole aim is to make what we consider a fair offer in order that those who hold bonds and desire, or need, money at this time may have an opportunity to procure it. This offer remains open until January 15th, 1937.

‘If you should desire further information regarding the First Security Deposit Corporation, either that company or this company as its affiliate, will gladly assist you in any way possible.

Yours very truly,

INVESTMENT

FINANCE COMPANY

By C. W. TWOMBLY’.

Plaintiff’s Exhibit 204, on the letterhead of  
Investment Finance Company:

‘Investment Finance Company  
415 South La Brea Avenue  
Los Angeles, California

March 30, 1937.

Grace Bidleman or  
Leland H. Bidleman  
323 W. 4th St.  
Long Beach, California.

Dear Sir and Madam:

‘The inquiries of First Security Deposit Corporation bondholders to our letter of



(Testimony of Leland H. Bidleman.)

December 5, 1936, were greater than we had anticipated.

‘We now have available funds with which to purchase First Security Deposit Corporation bonds, and for a limited period will pay the best cash market price available to any who desire or need money at this time for current needs or other investments.

‘Changing market conditions may affect a quotation on your First Security Deposit Corporation bonds. However, we will again attempt to satisfy any interested [521] bondholders.

‘This offer will remain open only for such time as we are able to meet the demands under current conditions.

Yours very truly,

INVESTMENT

FINANCE COMPANY

By C. W. TWOMBLY’.

Plaintiff’s Exhibit 205, on the letterhead of Investment Finance Company.

‘Mr. Leland H. Bidleman  
324 West Fourth Street  
Long Beach, California

Dear Mr. Bidleman:

‘You hold securities of the First Security Deposit Corporation, Bond No. A-1043 in the amount of \$5,700.00, A-1044

(Testimony of Leland H. Bidleman.)

amount \$3,000.00, A-501, amount \$4,100.00, A-5011, amount \$1,600.00, A-6850, amount \$264.82, and certificates A-48 for fifty-five shares Preferred, A-677 for three shares Preferred, and A-49 for twenty shares Preferred, and we are able at this time to obtain for you \$9,532.12 on same.

‘Please present these securities for payment, or if you prefer, take them to your bank, endorse by yourself and Grace Bidleman before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America, Los Angeles.

‘This, however, is subject to your immediate acceptance.

Yours very truly,

INVESTMENT

FINANCE COMPANY

By C. L. CRONK.

P.S. I live in Long Beach and my ‘Phone number is 869-95. Will be glad to call for interview any time at your convenience.’ [522]

(Testimony of Leland H. Bidleman.)

Plaintiff's Exhibit 167, upon the letterhead of the Investment Finance Company:

'Mr. Leland H. Bidleman  
324 West Fourth Street  
Long Beach, California

Dear Mr. Bidleman:

'At the suggestion of Mr. C. M. Hicks, I am writing regarding arrangements made with him for liquidation of bonds of the First Security Deposit Corporation. You hold bond No. A-1043 for \$5,700.00; A-1044 for \$3,000.00, A-5010 for \$4,100.00, A-5011 for \$1,600.00 and A-6850 for \$264.82, and Certificate A-48 for fifty-five shares Preferred, A-677 for three shares Preferred, A-49 for twenty shares Preferred.

'As you know the First Security Deposit Corporation is the liquidation corporation for the old Railway Mutual Building and Loan Association. We have arranged and can obtain for you at this time a total of \$11,877.85 for these securities. Please endorse in blank by yourself and Grace Bidleman and draw draft on us for a like amount through your bank, attaching said securities. Please instruct your bank to send them through the Duns-muir and Wilshire Branch of the Bank of America, Los Angeles, or if you prefer, you may send the securities, properly en-

(Testimony of Leland H. Bidleman.)

dorsed, to Mr. Hicks and I will take them up through him.

‘I think Mr. Hicks has written to you explaining these arrangements. This offer is for your immediate acceptance only.

Yours very truly,

INVESTMENT FINANCE  
COMPANY

By C. L. CRONK.’ ” [523]

Cross Examination

By Mr. Irwin:

The witness further testified: I have a written record with me of the maturity dates of those bonds; those bonds were due in 1942. At the time these transactions were initiated I spent two or three months at Long Beach. The Mr. Hicks referred to in one of the letters is a friend of mine who lives in Long Beach.

Cross Examination

By Mr. Lawson:

The witness further testified: I did not write any letters to the First Security Deposit Corporation or the Investment Finance Company.

“Mr. Lawson: Do you have any letters, Mr. Campbell, in your possession?

The Witness: The only one I wrote is I wrote one thing, I was looking into the matter and to see whether I could afford to lose that amount of money.

(Testimony of Leland H. Bidleman.)

By Mr. Lawson:

Q. I submit to you a letter.

A. In 1933.

Q. Did you write that letter?

A. (Examining document). I did."

"Mr. Lawson: There is a detached note form on one of the letters. Perhaps Mr. Campbell can explain that.

Mr. Campbell: Yes, the first one I handed to you.

Mr. Lawson: That would be the letter of May 1933. So it ought to be attached to that exhibit that is already in.

The Court: It may be attached and made a part of the exhibit."

(Said letter dated May 15, 1933 from 323 West 4th Street, Long Beach, California, addressed to the First Security Deposit Corporation, was received in evidence and marked defendant's Exhibit N.) [524]

The witness further testified: I kept in close touch with my investment with the company to see how matters were progressing in connection with the company. I kept in touch with the checks of the First Security Deposit Corporation. I talked over the affairs of the Investment Finance Company with my friend Mr. Hicks after this Cronk had been with him. We had taken Cronk into consideration. I wasn't taking Mr. Hicks in, I was taking this man, Cronk. I did not discuss this with anybody else besides Mr. Hicks, only with the banks. I took it up with the bank in Little Falls. I took



(Testimony of Leland H. Bidleman.)

it up with the bank somewhere along in November and December of 1938; that is when the deal was on.

“Q. Had you referred it to any other bank before that time?

A. No. I referred it to the banks. I showed the letters to the bank.

Q. Did the bank make an investigation?

A. They made an investigation.

Mr. Campbell: That is objected to as improper cross examination.

\* \* \* \* \*

The Court: The objection will be sustained on the ground that it is not proper cross examination.”

The witness further testified: That he wrote the letter dated July 26, 1938 and sent it to the Investment Finance Company; that his letter is in reply to the Investment Finance Company letter of July 17, 1938. (Said letter was offered and received in evidence as defendant's Exhibit P).

“Mr. Lawson: I wish to read this letter (Exhibit P) at this time.

‘Little Falls, New York

‘July 26, 1938

‘Investment Finance Company [525]

‘415 South LaBrea Avenue

‘Los Angeles, California.

‘Dear Sir:

‘Considering offer of July 17, 1938, we are checking up on our financial affairs to

(Testimony of Leland H. Bidleman.)

see if we can afford to lose so large an amount on First Security Deposit Corporation shares and bonds.

‘Thanking you, I will keep in touch with you.

Yours very truly,

LELAND H. BIDLEMAN,  
GRACE BIDLEMAN,’ ”

The witness further testified: That he signed his own name and that of Grace Bidleman to the letter. (Defendant’s Exhibit P). I sold the securities after I wrote that letter; that is, after I had considered about two or three months. I took it under consideration for two or three months. As stated in my letter, I was checking up. I made a check-up in this way; I figured their statements kept showing a deficiency all the whole and bye and bye they would go broke and I couldn’t get nothing. Asked if he got his interest on the securities from the First Security Company, the witness answered: “I got them regularly in an irregular way”.

The witness further testified: That he talked with Mr. Cronk down at Long Beach when he first came around. I told Mr. Cronk I wasn’t doing business that way. When I did business I did it through the banks. I talked to Mr. Cronk once or twice. Besides myself when I talked with Mr. Cronk, Mrs. Bidleman was present. I couldn’t tell you when that was that I talked with him; the first maybe was February or January in 1938. I told Mr. Cronk that I did business with the banks.

(Testimony of Leland H. Bidleman.)

“Cross Examination  
(Continued)

By Mr. Butler:

Q. Mr. Bidleman, do you recognize anybody in the [526] court room that you talked with in regard to your securities?

A. I don't know whether Mr. Cronk is present or not.

The Court: Can you see well enough to know people?

Will you come up here please, so he can see you?

(The defendant indicated came forward.)

The Court: Did you ever talk with this man, so far as you know?

The Witness: What is that?

The Court: Did you ever talk with this man? I am going to bring up several of them. Did you ever talk with that man?

The Witness: I couldn't say. He has changed some if I have. I think that man was a fleshy fellow.

The Court: Will you come forward, please?

(The defendant indicated came forward.)

The Court: Have you ever talked with this man?

The Witness: No.

The Court: Will you come up here?

(The defendant indicated came forward.)

The Witness: Go back. I never talked with him, no. Sit down.

(Testimony of Leland H. Bidleman.)

The Court: Did you ever talk with him?

The Witness: No.

The Court: Will you come up here?

(The defendant indicated came forward.)

The Court: No, sit down.

Will you come up?

The Witness: No, not that one." [527]

---

### CLARENCE M. HICKS

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

"Mr. Irwin: Same objections as has gone to the other witnesses will go to this witness.

The Court: Same objection, same ruling.

Mr. Irwin: And exception."

The witness testified: I live at 323 West 4th Street, Long Beach. During the year 1932 and prior thereto, my wife and I were owners of securities or depositors with the Railway Mutual Building and Loan Association. During the course of 1932 I exchange the securities I had in that building and loan association for securities of the First Security Deposit Corporation. Since I exchanged my securities I have received correspondence from the First Security Deposit Corporation. I have also received correspondence from the Investment Finance Company. I did not retain any of that correspondence. I received the original of plaintiff's Exhibit 206 for identification, a form letter

(Testimony of Clarence M. Hicks.)

dated November 15, 1932, addressed to me and bearing the typewritten signature "C. E. Perkins." The securities referred to in the carbon copy were enclosed in the original letter which I received. The blue card referred to in the letter was enclosed with the original letter. (The letter was received in evidence and marked plaintiff's Exhibit 206. Said letter is separately certified pursuant to stipulation and order of Court).

The witness further testified: That the card headed "First Security Deposit Corporation," dated December 6, 1932, signed "C. M. Hicks and Cornetta Hicks" is the card I received with the original of plaintiff's Exhibit 206; that it bears his signature and his wife's signature; That after signing the card, it was return to the company. (Said card was withdrawn from plaintiff's Exhibit 34 and was received in evidence and marked plaintiff's [528] Exhibit 207, which said exhibit is separately certified pursuant to stipulation and order of Court).

The witness further testified: I received each of the securities mentioned in plaintiff's Exhibit 206; They were:

"A-781, 57 shares Preferred stock A, \$1,140; A-6952, accumulative bonds, \$3,061.39; A-5169, full paid bond, \$1,500; A-1183, full paid bond, \$1,000."

Subsequent to the receipt of those securities I sold them in May, 1938, to Mr. Cronk. Plaintiff's Exhibit 208 for identification was the check I re-



(Testimony of Clarence M. Hicks.)

ceived from the sale of my securities. That is the full amount received by me for such sale. The check was delivered to me at my home by Mr. Cronk. (Said check was received in evidence and marked Exhibit 208 which said check is separately certified pursuant to stipulation and order of Court).

The witness further testified: That he met Mr. Cronk possibly six weeks or two months prior to May 28, 1938; I met him at my home. I had a conversation with Mr. Cronk at the time relative to the sale of my securities. He talked to me about buying them. He said he could give me 70 and two. 70 on the bonds and \$2.00 on each share of stock; He said that he was afraid that the Commissioner would take it over or go into bankruptcy and that they were making no money. When he referred to the Commissioner, I said the Building and Loan Commissioner. I told him I hoped they would and he said "No, you don't, because they have come in and taken the best of the stock out; there is nothing but junk left." He said that the company they organized as a subsidiary of the First Security had taken it out. I do not recall the name of the subsidiary. I told him I would let him know. It ran along for probably a month before he came back and then he offered me 80. He offered me 80 a few days before I sold them. He possibly talked to me over the phone at that time. I don't think he came to my house any more. He said he had a chance to give me \$10.00 more or \$80.00 for the [529] other and \$2.00 on the shares and I said I would talk it

(Testimony of Clarence M. Hicks.)

over with my wife and let him know. I have told you all that I recall Mr. Cronk said during the course of those conversations. Asked what else he recalled Mr. Cronk said, the witness answered:

“Well, any more than he said that they were not making any money, the First Securities, and that he thought it was a good thing for me to get out of it. At the time of the conversation when he told me he could pay \$80.00 or 80%, he said he could pay me more than he had some others—that he had authority to pay more than others. He didn’t tell me why.”

Asked if Mr. Cronk had said anything with reference to the Investment Finance Company, the witness answered:

“He said they had got in and got the best of the stock, the best of the profit. It was after these conversations that I accepted the \$80.00 or the 80% offer. The amount I received, \$4,563.00 was for both the bonds and the stock which I had in that corporation.”

#### Cross Examination

By Mr. Irwin:

I think I received my interest on the bonds up to the time I sold them. I received interest from time to time. They were always three months behind in the interest. I should have the interest for May, 1938 that I didn’t get when I sold, I guess.

(Testimony of Clarence M. Hicks.)

### Cross Examination

By Mr. Butler:

Asked if anyone besides Mr. Cronk ever contacted him with regard to the sale of securities in the First Security, the witness answered: "I don't think so. I got some cards from some Mr. Jeffers in Long Beach down there." Asked if he had any conversation with Mr. Jeffers, the witness answered: "I used to go down and talk with him once in a while. I had a conversation with Mr. Jeffers about the First Security Deposit Corporation in February of 1938; that was before I talked with Mr. Cronk. Mr. Cronk told me the first time he came to see me that he was representing the [530] *the* company and was around buying up the stock; that he thought it was a good plan for us to get out. He said he was representing the First Security. I don't remember much about the conversation. Mr. Cronk gave me his individual check. I did not believe I was selling it to him personally. I knew I was selling it to the other company—some finance company. I knew at the time I sold my bonds that they would be due until after 1942." Asked if he had a discussion with Mr. Cronk regarding the fact that his bonds would not be due until after 1942, the witness answered: "I don't think we had much of a conversation."

### Redirect Examination

Mr. Jeffers is a man who was in the commission business in Long Beach, and I used to get some cards from him.

## ALICE GEDDES

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am the daughter of Hattie R. Geddes. My mother and I were security holders in the Railway Mutual Building and Loan Association. I believe we caused our securities in the building and loan association to be transferred or exchanged into securities of the First Security Deposit Corporation.

“Mr. Butler: At this time I object to the testimony of this witness on the ground that it is immaterial and hearsay.

The Court: The same objections that have been made to each of the investors may be deemed to be made as to all defendants; the same ruling.

The witness further testified: The amount of my investment which was exchanged into the First Security Deposit Corporation was \$303.00. I do not recall what securities were issued to me in exchange for those in the Railway Mutual. During the period of time [531] that I and my mother were owners of these securities I did not always examine the correspondence which came in reference to them. We discussed it. The letter, plaintiff's Exhibit 209 for identification, dated December 5, 1936, I recall; I recall whether or not such letter was contained in an envelope which is attached; it was received through the mail. (Plaintiff's Exhibit 209 for identification was offered and received in evidence and marked plaintiff's Exhibit 209. Said

(Testimony of Alice Geddes.)

exhibit is separately certified pursuant to stipulation and order of Court).

The witness further testified: My mother and I had occasion to go to the office of the First Security Deposit Corporation; so far as I remember it could have been in November of 1937. The signature appearing on the reverse side of the check, plaintiff's Exhibit 210 for identification, is my mother's signature; the date of it is November 4, 1937; it is the check received in the sale of our securities; it was received on the day we went into the office of the company; that was the date we called at the offices of the company. (Said check was received in evidence and marked plaintiff's Exhibit 210. Said check is separately certified pursuant to stipulation and order of Court).

The witness further testified: We went to the office in response to a number of letters that we had received.

The witness was shown a letter dated July 17, 1937 addressed to "Our Bondholders" signed "First Security Deposit Corporation by C. L. Cronk" to which was attached an envelope addressed to Hattie R. Geddes and bearing cancellation date of July 20, 1937 and testified that that was one of the letters received. (It was stipulated that the letter was in identical form and text as plaintiff's Exhibit 184).

"Mr. Campbell: I will read it only in part:

'For these reasons I have been employed to conduct a survey of the bondholders of the



(Testimony of Alice Geddes.)

First Security [532] Deposit Corporation and I will very much appreciate the courtesy of an interview with you in the near future. I will call upon you or if you prefer, I will see you at this office.' "

The witness further testified: On the occasion we went to the offices of the company on November 4, 1937, we had a conversation with Mr. Twombly. Mr. Twombly stated that his best offer on our holdings would be 70 cents on the dollar. My mother asked him if that was his very best offer and he said it was; that he felt in the future it wouldn't be as good, if they could offer us anything at all; that he felt that conditions, business condition in general, were very bad and in view of that fact he himself wanted to withdraw from the company as soon as possible, as soon as he could settle his own business affair with the company. My impression was that he was very sincere in advising us to sell at that time. He said he was awaiting word from some commissioner who was going to get him a report on conditions; he said the Building and Loan Commissioner. It was on the occasion of that conversation that we sold our securities and received the check which I have identified; that check was the full amount received for all of our securities.

"Mr. Campbell: At this time I will read from plaintiff's Exhibit 45, purchase order of the Investment Finance Company No. 875, dated November 4, 1937.

(Testimony of Alice Geddes.)

‘To Hattie R. Geddes:

‘No. A-6256; Quantity—80.13; Cumulative—non-prior; Price—\$56.07; Unit 70;

No. A-6255; Quantity—\$133.18——’

Mr. Irwin: Could I ask counsel for the last figure?

Mr. Campbell: The second item is: ‘A-6255; Quantity—\$133.18; Cumulative—non-prior Price—\$93.20;

‘No. A-2159; Quantity—\$30.39; Cumulative—prior \$21.27; [533]

‘Total quantity, \$243.70; Price \$170.54.’

Dated 11-4-37, Check No. 1395, with the initials of ‘C. W. T., R. W. S., E. C. T.’ ”

At the time we turned in the bonds referred to, we also turned in shares of stock in the First Security for which we received \$2.00 per share. The check we received must have been in payment of both our bonds and stock.

#### Cross Examination

By Mr. Adams:

The witness was asked if Mr. Twombly didn’t tell them that they were awaiting a report from the Bureau of Internal Revenue with reference to taxation rather than the Building and Loan Commissioner, and answered: “My impression is that it was the Building and Loan Commissioner”; that she did not remember that Mr. Twombly said they were waiting for a tax report from the Bureau of Internal Revenue.

“Mr. Campbell: Now I have a certain matter that I wish to read, if I may take the witness stand for that purpose.

First, I will read from plaintiff's Exhibit 23, the journal of the First Security Deposit Corporation, entries appearing on page 110 of the record of journal entries, month of April, 1934, which entries purport to show the issuance of various types of bonds of the corporation.

‘4 per cent short term prior, maturity date February 1, 1933; net original issue, \$4,438.’

If I may, I will read the maturity dates to be followed by the amount issued.

The Court: Yes.

Mr. Campbell: ‘May 1, 1933, \$7,078.66; August 1, 1933, \$6,235.49; November 1, 1933, \$14,067.62; February 1, 1934, \$4,592.34; May 1, 1934, \$6,283.93; August 1, 1934, \$4,520.89; November 1, 1934, \$9,492.85’ [534]

The dates, as given, are all maturity dates.

4 per cent short term non-prior—I will read the maturity dates followed by the net issue.

‘Maturity date February 1, 1933, \$3,351.40; April 1, 1933, \$340.69; May 1, 1933, \$4,573.31; August 1, 1933, \$3,789.30; November 1, 1933, \$4,960.69; February 1, 1934, \$1,664.67; May 1, 1934, \$2,435.00; August 1, 1934, \$735; November 1, 1934, \$6,945.04.

5 per cent cumulative prior: 'Maturity date, November 1, 1935, \$1,277.92; November 1, 1937, \$3,562.46; November 1, 1938, \$4,242.00; November 1, 1942, \$113,681.80.'

5 per cent cumulative non-prior: 'November 1, 1937, \$12,523.96; November 1, 1938, \$1,005.49; November 1, 1942, \$31,098.78.'

6 per cent full paid prior: 'November 1, 1935, \$10,400.

'November 1, 1937, \$53,700.

November 1, 1942, \$358,200.

5 per cent full paid prior: 'Maturity date, November 1, 1942, \$3,000.

6 per cent full paid non-prior: 'November 1, 1937, \$28,100.

'November 1, 1942, \$211,700.

5 per cent full paid non-prior: 'November 1, 1937, \$4,200.

'November 1, 1938, \$300.

'November 1, 1942, \$24,300.'

This is a grand total of all that I have so far given. \$1,295,694.90."

Mr. Adams: I take it, your Honor, too, that all of this [535] testimony, that the objections that went to the book in its original offer and the entries are, of course, also made to the reading without repeating them?

The Court: Same objection made to the original book and entries contained will hold as to

these and need not be repeated, as to all defendants.”

Mr. Campbell: Reading from plaintiff’s Exhibit 26:

‘Bond A-6048; issued to Grace Benn; face amount \$221.66; type Accumulative Non Prior; Maturity date, November 1, 1942.

‘Bond A-1044; issued to L. H. Bidleman; face amount, \$3,000; type full paid prior; maturity date, November 1, 1942.

‘Bond A-1043; issued to L. H. Bidleman; face amount \$5,700; type full paid prior; maturity date, November 1, 1942.

‘Bond A-5010; issued to L. H. Bidleman; face amount \$4,100; type full paid non-prior; maturity date, November 1, 1942.

‘Bond A-5011; issued to L. H. Bidleman; face amount \$1,600; type full paid-non-prior; maturity date, November 1, 1942.

‘Bond A-6850; issued to L. H. Bidleman; amount \$264.82; type cumulative non-prior; maturity date November 1, 1942.

‘Bond A-7195; issued to Paul Burkholder; amount \$391.22; type accumlative non-prior; maturity date November 1, 1942.

‘Bond A-2573; issued to Paul Burkholder; amount \$17.06; type accumlative prior; maturity date November 1, 1942.

‘Bond A-1493; amount, \$1,400; type full paid [536] prior; maturity date November 1, 1942.



‘Bond A-6740; issued to D. L. Carstensen; amount \$281.89; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-8049; issued to D. L. Carstensen; amount \$50.00; type—short term—non-prior; maturity date November 1, 1933.

‘Bond A-8050; issued to D. L. Carstensen; amount \$50.00; type, short term non-prior; maturity date May 1, 1934.

‘Bond A-8051; issued to D. L. Carstensen; face amount \$50.00; type, short term non-prior; maturity date November 1, 1934.

‘Bond A-2159; issued to Hattie Geddes; face amount \$30.39; type accumulative prior; maturity date November 1, 1942.

‘Bond A-6255; issued to Hattie Geddes; face amount \$133.18; type, accumulative—non-prior; maturity date November 1, 1942.

‘Bond A-6256; face amount \$80.13; issued to Hattie Geddes; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-1183; issued to C. M. Hicks; face amount \$1,000; type, full paid prior; maturity date November 1, 1942.

Bond A-5169; issued to C. M. Hicks; face amount \$1,500; type full paid non-prior; maturity date November 1, 1942.

‘Bond A-7159; issued to C. M. Hicks; face amount \$3,061.39; type accumulative non-prior; maturity date, November 1, 1937.

‘Bond A-6333; issued to S. H. Jacobson; face [537] amount \$1,093.60; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-6963; issued to Florence Johnson, face amount \$736.04; type accumulative non-prior; maturity date November 1, 1937.

‘Bond A-2339; issued to Audra Jones, face amount \$4,242; type accumulative prior; maturity date November 1, 1938.

Bond A-6967; issued to Audra Jones; face amount \$1,005.49; type accumulative non-prior; maturity date November 1, 1938.

‘Bond A-1215; issued to F. W. Kidder; face amount \$700; type full paid prior; maturity date November 1, 1942.

‘Bond A-2057; issued to Bessie Chobotsky; face amount, \$215.87; type accumulative prior; maturity date November 1, 1942.

‘Bond A-2247; issued to F. W. Kidder; face amount \$26.63; type accumulative prior; maturity date November 1, 1942.

‘Bond A-5175; issued to F. W. Kidder; face amount \$100.00; type full paid non-prior; maturity date November 1, 1942.

‘Bond A-6971; issued to F. W. Kidder; face amount \$60.00; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-1254; issued to Bessie Matte-

son; face amount, \$1,000; type full paid prior; maturity date November 1, 1942.

‘Bond A-5187; issued to C. D. Matteson; face amount \$2,400; type full paid non-prior; maturity date November 1, 1942.

‘Bond A-6466; issued to S. H. Mitchell; face amount \$440.37; type accumulative non-prior; maturity date November 1, 1942.

[538]

‘Bond A-1260; issued to Fred Morse; face amount \$1,000; type full paid prior; maturity date November 1, 1942.

‘Bond A-2309; issued to Fred Morse; face amount \$100; type accumulative prior; maturity date November 1, 1942.

‘Bond A-8250; issued to Fred Morse; face amount \$7.30; type short term non-prior; maturity date May 1, 1933.

‘Bond A-1246; issued to A. H. McConnell; face amount \$2,000; type full paid prior; maturity date November 1, 1942.

‘Bond A-6988; issued to A. H. McConnell, face amount \$468.41; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-5213; issued to W. H. Robinson; face amount \$2,400; type full paid non-prior maturity date November 1, 1942.

‘Bond A-1495; issued to Elsie Smith, by Hattie Geddes; face amount \$3,900; type

full paid prior; maturity date November 1, 1942.

‘Bond A-2575; issued to Elsie Smith, by Hattie Geddes; face amount \$33.19; type accumulative prior; maturity date November 1, 1942.

‘Bond A-2576; issued to Elsie Smith, by Hattie Geddes; face amount \$987.70; type accumulative prior; maturity date November 1, 1942.

‘Bond A-1350; issued to D. S. Taylor; face amount \$1,100; type full paid prior; maturity November 1, 1942.

‘Bond A-2423; issued to D. S. Taylor; face amount \$86.08; type accumulative prior; maturity date November 1, 1942.

[539]

‘Bond A-1369; issued to J. S. Walker; face amount \$700; type full paid prior; maturity date November 1, 1942.

‘Bond A-6695; issued to L. A. Walker; face amount \$113.21; type accumulative non-prior; maturity date November 1, 1942.

‘Bond A-2463; issued to Jack Winston; face amount \$387.23; type accumulative prior; maturity date November 1, 1937.

‘Bond A-1499; issued to Mary Wisely; face amount \$2,500; type full paid prior; maturity date November 1, 1942.

Bond A-2721; issued to Kate Wright; face amount \$854.20; type accumulative

non-prior; maturity date November 1, 1942.'

---

WADE H. ROBINSON

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am in the insurance business and prior to the year 1932 I was an investor in the Railway Mutual Building and Loan Association and subsequently I exchanged or transferred my securities to the First Security Deposit Corporation.

"The Court: This is one of the investors?

Mr. Crawford: Yes.

The Court: The same objections may be deemed to be made there, the same running objections, by all defendants, and the same ruling."

The witness further testified: The total amount of my investment was \$3,000.00. I received the letter on the letterhead of the Investment Finance Company dated March 30, 1937, by mail. (It was stipulated that the letter identified by the witness was [540] identical with the letter, plaintiff's Exhibit 145.)

The Witness further testified: I received the letter on the letterhead of the First Security Deposit Corporation dated July 17, 1937, addressed to "Our Bondholders" through the mail. (It was stipulated that the letter identified by the witness was an identical copy of plaintiff's Exhibit 193).



(Testimony of Wade H. Robinson.)

The witness further testified: I received the original of plaintiff's Exhibit 211 for identification. I did not retain the original. (Said carbon copy of the letter was received in evidence and marked plaintiff's Exhibit 211).

"Mr. Crawford: I will now read Plaintiff's Exhibit 211 to the jury.

'November 3, 1937.

Mr. Wade H. Robinson

3707 E. 5th Street

Long Beach, California

Dear Sir:

'You hold securities of the First Security Deposit Corporation, Bond No. A-5213 in the amount of \$2400.00 and Certificate A-906 for thirty shares Preferred, and we are able at this time to obtain for you \$1740.00 on same.

Please present these for payment, or if you prefer, take them to your bank, endorse by yourself and Jane S. before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America, Los Angeles.

This however, is subject to your acceptance within ten days.

Yours very truly,

INVESTMENT FINANCE  
COMPANY,

By C. L. CRONK' " [541]

(Testimony of Wade H. Robinson.)

The witness further testified: I had several visits with Mr. C. L. Cronk, but I don't know whether the first one was before the receipt of plaintiff's Exhibit 211 or after; I don't remember whether the first conversation was before or after. The first time I met Mr. Cronk was at his home in Long Beach. Mr. Cronk told me he was in a position to offer me a certain amount for that stock—he stated the amount but I don't remember whether that was the first offer he made me or not, and I don't remember the amount that he stated at that time. I remember that whatever the figure was I told him I didn't believe I cared to sell it at that time for that amount. He stated that that amount was an amount above the offer that had been made before; that it was somewhat better than the stock had been listed, and that it looked like it would be probably as good as I would be able to get for it. He showed me a list of names of persons who had accepted the offer. I think Mr. Cronk told me that the affairs were going through a procedure of receivership; and the affairs usually operated at a loss to the stockholders; the funds usually were used up by the expenses of the receivership or something to that effect. I did not sell my securities at that particular conversation. I don't recall any conversations after that until the time I sold my stock; I believe it was in the Fall of 1938. That conversation took place in my home. Besides Mr. Cronk and myself my wife was present for part of the conversation. At that time Mr. Cronk told me

(Testimony of Wade H. Robinson.)

they had been able to dispose of the stocks at a better figure than they had anticipated and offered me an amount above his previous offer and said: "You understand that the company has disposed of its choicest properties and I think this is as much as you will probably be able to get for that stock. And it is getting expensive now—most of them have sold, and the ones who are left are widely separated and it is expensive to contact all of them. So I think it would be advisable for you to take advantage of the offer". [542]

The witness further testified: I didn't accept that offer. I told him that there would be an interest payment due; that I would hang on to it at least until after that payment was made and he said: "If I could get that payment above this offer paid to you now, would you consider this", and I said I thought I would. He then made a telephone call from my house. I didn't pay any attention to the telephone conversation; I just heard him state the fact that we had talked and he said: "All right you have the stock here. I will give you a check for it now." At the time he put in a telephone call he stated he would telephone his company. He stated the company but I don't remember which one he mentioned. After the telephone conversation, he purchased my securities at the price he suggested to me, including interest. Plaintiff's Exhibit 212 for identification, a check dated August 2, 1938, payable to me in the sum of \$2,072.00 and signed, "C. L. Cronk" bears on the reverse side my signature and

(Testimony of Wade H. Robinson.)

the signature of my wife. This is the check I received in payment for my stock. (Said check was received in evidence and marked plaintiff's Exhibit 212. Said exhibit is separately certified pursuant to stipulation and order of Court).

“Mr. Crawford: Reading from Government's Exhibit 45:

‘Order No. 1030

Purchase Order

Investment Finance Company

415 South LaBrea Avenue

Los Angeles, California

August 22, 1938

To Wade H. and Jane J. Robinson

A-5213, quantity wanted, \$2400, full paid non-prior, price: \$2,070; unit 86 1/3. Interest allowed \$72.00; Cronk Check No. 241; R. W. S.; J. H. E.; E. C. T.; price approved, Board of Directors' meeting September 29, 1938' ” [543]

#### Cross Examination

By Mr. Lawson:

I think my bonds matured November 1, 1942. I knew that at the time I sold the bonds. The original securities I had in the Railway Mutual that I exchanged for stock was one \$2,000 piece and a \$1000. one. I don't recall the type of securities I had in the old Railway Mutual. I do not recall that the securities that I had in the old Railway

(Testimony of Wade H. Robinson.)

Mutual were subordinate to an issue ahead of my securities; I guess it was in the form of an investment certificate. I presume it is correct that there was an issue of investment certificates ahead of mine.

“By Mr. Lawson:

Q. Do you recall, Mr. Robinson, that when you received the securities of the First Securities Deposit Company, that you received them on the basis of 80 per cent in collateral trust bonds in the First Security Company, 80 per cent of the face value of the securities that you had in the Railway Mutual Company, and 20 per cent of that face value in preferred stock of the First Security?

A. Yes, I think that is correct.”

(It was stipulated that all bonds of the First Security were issued November 1, 1932).

The witness further testified: That he received interest on his collateral trust bonds from the time that they were acquired and up to the time that he sold them; that he did not recall the rate of interest but the amount was \$72.00 every six months; that he received those payments in each year up to the date he sold his securities.

The witness further testified: Mr. Cronk didn't say it was above the listed price at that time, but it was above the price that it had been listed prior to that time; He claimed this figure was better than—there had been an improvement in the price of the



(Testimony of Wade H. Robinson.)

stock over the time prior to that; he stated that he thought it [544] would be a good time to dispose of it because of the expense of sending someone around to contact these people and the expense of the receivership. He told me that that price which he offered was as good a price as he could get from my securities from any other source; I think that that was the price that was listed. I don't remember that he said it was a better price than I could get from any other source. I didn't make any inquiry to find out whether his statements were correct because I didn't consider selling it at that price at that time. However, different brokers would send me a card sometime listing what the price of it was. The price he offered me was just about the same as these brokers. I wouldn't be able to say whether the price he offered was a little bit better than the price offered by the brokers.

The witness was asked to tell everything that Mr. Cronk told him about receivership and answered: I don't know that I can tell you everything he said, but I remember he said 'You probably are familiar with receiverships, and if you are, you know something of how the funds go, that the expense of the receivership generally takes a big share of the funds.' I had had some experience; that part of Cronk's statement regarding receiverships was a correct statement. I don't remember that Cronk made the statement that if the old Railway Mutual had gone into receivership that I wouldn't have received anything like the offer he made to me.

(Testimony of Wade H. Robinson.)

Asked if Cronk made any statement regarding the difficulties that the First Security had in making expenses and paying the interest charges and trust charges, the witness answered: He told me that it was very expensive to contact all the stockholders and try to deal with them and get the affairs settled and the expense of the whole thing was heavy. He didn't tell me that they had difficulty in collecting their rents and their interest and the income to which the company was entitled. It was approximately a year between the first and second conversation that I had with Mr. Cronk. When I had [545] the second conversation with Mr. Cronk in August, 1938, I knew there had been an improvement in conditions, economically, and business was better. The highest offer that Mr. Cronk made was in August, 1938. In the second conversation Mr. Cronk in substance stated that the choicest of the properties of the company had been disposed of. I did not make any investigation or check to determine whether that was correct or not. I still have my 30 shares of preferred stock in the First Security Company.

---

LYMAN S. WALKER

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am a railroad switchman. Prior to the year 1932, I was an investor in the Railway Mutual Building and Loan Association.

(Testimony of Lyman S. Walker.)

“Mr. Butler: At this time I object to the testimony of this witness \* \* \* on the ground that it is hearsay and immaterial.

The Court: Same objections as to each defendant may be deemed to be made, and the same ruling.”

The witness further testified: That thereafter he exchanged or transferred his Railway Mutual securities into the securities of the First Security Deposit Corporation. That his total investments consist of a full paid up \$700 bond and an accumulative bond of \$113.21; also nine shares of stock, two shares of stock for my boy, which my daughter Lois Maxine Walker has now. The full paid up bond is A-1369 and the accumulative bond is A-6695. I had occasion to call at the offices of the First Security Deposit Corporation in the month of May or June of 1937; my wife accompanied me. At the office we were introduced to Mr. Twombly and had a conversation with him. We came in there to see if we could get our money out of our securities and he told us the financial condition that the company was in. He told us they were in a bad condition [546] and practically on the verge of bankruptcy and that the securities wasn't worth a lot of money but they could take care of them at some kind of a price for us, and he stated a price that didn't satisfy us; so we didn't sell the bonds. The price he offered us at that time was less than 80 cents on the dollar. We had another conversation with

(Testimony of Lyman S. Walker.)

Mr. Twombly the middle of 1937 at the offices of the Security First National on LaBrea Avenue; my wife was with me at that time; at that time he told us practically the same thing as in the first conversation; that things were looking bad; he told us that inasmuch as the company was right on the verge of a breakdown, or he told us that he could give us around what he offered us before, maybe a dollar or more; he says "that is about all, we can't give you any more than that". We did not accept the offer.

The witness further testified: That the original of plaintiff's Exhibit 213 for identification, a letter dated November 8, 1937, addressed to Mr. L. S. Walker, signed Investment Finance Company, C. L. Cronk, was received by him through the United States mail. That he received the original of plaintiff's Exhibit 214 for identification through the United States mail. (Thereupon plaintiff's Exhibits 213 and 214 for identification respectively were offered and received in evidence).

"Mr. Crawford: I will now read to the jury Government's Exhibit 213.

'November 8, 1937

Mr. L. S. Walker  
3422 Loosemore Street  
Los Angeles, California

Dear Sir:

You hold securities of the First Security Deposit Corporation, Bond No. A-1329 in the amount of \$700.00 and Certificate

(Testimony of Lyman S. Walker.)

A-873 for nine shares Preferred, and we are able to obtain at this time \$508.00 on same.

Please present these securities for payment, or if [547] you prefer, take them to your bank, endorse by yourself and Grace E. Walker before witness, and draw a draft on us for this amount through the Duns-muir and Wilshire Branch of the Bank of America.

This, however, is subject to your acceptance within ten days.

Yours very truly,

INVESTMENT FINANCE  
COMPANY,

By C. L. CRONK.'

Now, reading plaintiff's Exhibit 214, a letter dated November 16, 1937, addressed to L. S. Walker, 3422 Loosemore Street, Los Angeles, California.

'Dear Sir:

You hold securities of the First Security Deposit Corporation, Bond No. A-6695 in the amount of \$113.21, and Certificate A-532 for two shares Preferred, in the name of Lois Maxine Walker, a minor, and we are able at this time to obtain for you \$83.24 on same.

Please present these securities for payment, or if you prefer, take them to your bank, endorse by yourself as guardian, to-



(Testimony of Lyman S. Walker.)

gether with the enclosed affidavit properly executed before a notary, and draw a draft on us for this amount through the Duns-muir and Wilshire Branch of the Bank of America, Los Angeles.

This, however, is subject to your acceptance within ten days.

Yours very truly,

INVESTMENT FINANCE

COMPANY,

By C. L. CRONK.'

The witness further testified: That approximately three to five months following the receipt of the letter, plaintiff's Exhibit 214 dated November 16, 1937, had a conversation with C. L. [548] Cronk; the conversation took place in my home in the presence of my wife; Mr. Cronk came and told us that he came to see what we were going to do about the disposing of our bonds and he told us *what we were going to do about the disposing of our bonds and he told us* that the company was on the verge of a collapse and he wanted to get the business straightened up for them, then he made us an offer. We did not accept the offer. It was not a very long time after when he came back and we had another conversation; the conversation was along the same line; I asked if they were any higher and he said "They are just in as bad shape, or worse". He said, "I am here to close it up", or else, "We have got to close it up. I want to get it

(Testimony of Lyman S. Walker.)

closed up for them''. He made me an offer of approximately 80 cents on the dollar. I did not accept the offer but I made him a proposition and he accepted that; I told him I wouldn't sell for less than 85 cents on the dollar anyhow; that I would lose it all before I would do that. He accepted the offer and wrote me a check for it.

Plaintiff's Exhibit 215 for identification, a check dated October 19, 1938 payable to me for \$691.22, signed by C. L. Cronk, is the check that Mr. Cronk gave me at that time. It bears my signature on the reverse side. (The check was received in evidence and marked plaintiff's Exhibit 215, and is separately certified pursuant to stipulation and order of Court).

The witness further testified: This sale included only the bonds; I still have the stock.

### Cross Examination

By Mr. Irwin:

The witness further testified: That in addition to the \$813.21 gross of bonds, he had some other securities which he pledged on a loan with the First Security; these securities were sold under the loan pledge and are not included in the ones I testified about. I do not recall whether I had an investment certificate in the Railway Mutual; I was not a stockholder. I did not get interest on [549] on my \$700.00 full paid up certificate from the First Security up until the time I sold it; there was times when we didn't receive any interest on it; I can't tell you

(Testimony of Lyman S. Walker.)

how many times, because after we disposed of everything, we must have destroyed everything. I think there was a couple of times that we didn't get any interest from the period we held the bonds from November 1, 1932 to October 19, 1938. I don't recall whether the interest was 5 or 6%.

The witness further testified: That he received the original of the letter, defendant's Exhibit Q for identification. He didn't recall what the face amount of the bond was that he deposited with the company as a pledge for the repayment of the money that he borrowed; they took that bond and it was supposed to have covered everything of my borrowed money. (It was stipulated that the maturity date on the bonds sold was November 1, 1942). When I went to the First Security Deposit Company's office on La Brea, I knew that the office of the Investment Finance Company was in the same *suit*. [550]

"Mr. Campbell: At this time, if your Honor please, I am going to renew my offer of plaintiff's Exhibit 181 as to all defendants upon the basis of the stipulation relative to the signature of J. Howard Edgerton; and I also offer the signature of the Defendant C. W. Twombly, (plaintiff's Exhibit 18) for a comparison with signatures heretofore stipulated to be his signature by counsel in this case."

\* \* \* \* \*

"Mr. Campbell: I make the same offer as to Exhibit 180 on the basis of the admitted sig-

(Testimony of Lyman S. Walker.)

nature of the defendant J. Howard Edgerton.

Mr. Irwin: May it be considered that all defendants have objected to Exhibits 180 and 181 on the grounds of hearsay and immateriality and no foundation.

The Court: Yes.

(Said offers were taken under advisement by the Court.)

Mr. Campbell: At this time I renew my offer of plaintiff's Exhibit 12 for identification, making such offer upon the basis of the admitted signature of the Defendant J. Howard Edgerton. That is an application in the matter of R.F.D. Discount Company.

Mr. Butler: On behalf of the defendant Cronk, I object on the ground that no proper foundation being laid; hearsay, and immateriality.

Mr. Lawson: Those objections run to all defendants, and not connected up, and not the proper evidence to show knowledge or intent on the part of the defendants.

Mr. Campbell: Now, I also at this time desire to renew my offer of plaintiff's Exhibit 13 for identification upon the same basis; that is to say the admitted signature of the Defendant J. Howard Edgerton. It is the matter of the R.F.D. Discount Company, a corporation, supplement to application for permit to issue stock. [551]

(Testimony of Lyman S. Walker.)

Mr. Irwin: Same objections as have been interposed as to 12.

Mr. Butler: I object on the ground of no foundation laid, hearsay and immateriality.

Mr. Lawson: Same objection.

The Court: Yes, I will take them all under advisement.

---

### C. W. WEBSTER

My occupation is that of Post Office inspector and have been such for 38 years. It is part of my duties to investigate the alleged violations of the United States mails. I was heretofore assigned for the purpose of investigating the facts of this case in connection with my duties. I commenced my investigation in June of 1940. In the course of my investigation I called upon the defendant Edgerton for the books and records of the company. He turned them over to me.

The witness further testified: That on July 9, 1939 there came into my possession a certain statement which I received from the inspector in charge at San Francisco, California; I had a conversation with the defendant Twombly with respect to that statement in my office in this building on July 9, 1940. (Thereupon the following proceedings were had in the absence of the jury).

“Mr. Campbell: \* \* \* \* Now, this document is offered, you might say, upon two bases: First, as admission against interest on



the part of the Defendant Twombly, and, second, to show his joining that scheme, or enterprise, and as to him the existence of a scheme or enterprise.”

\* \* \* \*

“The Court: Now, I think it is only fair, in order that you may present the matter intelligently to the Court, to say that it involves, for the purpose of illustration (I have gone through it very hurriedly) all of the defendants and describes at some length, six pages, single spaced, the activities of this corpor- [552] ation. So that for the purpose of argument, you may consider that all of the defendants are involved.”

“The Court: It is perfectly clear that such a document as this couldn’t be considered to be properly introduced in evidence as against the other defendants, having been made subsequent to the termination of any possible connection which he had with the conspiracy,  
\* \* \* \*

“\* \* \* \* it is conceded by the Government that Twombly severed his connection with both of these corporations about the 21st of December, 1938. Now, on July of 9th, 1940, a year and a half after that, he made the statement to the postal inspector as to facts.”

“Mr. Campbell: \* \* \* I am just in the process of laying my foundation. \* \* \* \*

The Court: It might be better to have that

foundation laid this afternoon, then have the matter held over until tomorrow morning.

Mr. Lawson: \* \* \* \* when I thought or heard the rumor that there might be hostile defenses. I had Mr. Adams bring Mr. Twombly to my office. \* \* \* \*

“and I canvassed this situation with him very carefully to find out—I am not saying that there are any hostile defenses—but to find out as to whether or not there were any hostile defenses.

We spent about three or three and a half hours in canvassing the case, and in all of its phases, and I was assured from the beginning until the end that no statement had ever been made by Mr. Twombly, either in the form of a written statement, or any oral statement, that he had made any damaging or incriminating statements pertinent to my client, or any of the other defendants in the case. And I want to assure your Honor that I went into that very thoroughly, and care- [553] fully.

I have no reason to believe that that statement contains anything contrary to the statements that were made to me at that time, and I can assure your Honor that up until the time that this statement was presented I have always been of that mind.”

“\* \* \* \* if, assuming now that it does contain something contrary, as represented to me—it is a complete surprise. We have been

collaborating all through the defense on the assumption that no statement has been made of a damaging character to my clients.

\* \* \* \* \*

Mr. Irwin: Why did we make all this inquiry at the outset?

Well, it is no secret that there was a very severe disagreement between Mr. Twombly and the others, and the break was not a pleasant one. It happened in '38, and prior to the time of this indictment they weren't even on speaking terms, so as lawyers, being advised of that, we were interested in finding out what had gone before, and that is why we started looking for those statements that might be made by a person in the heat of passion or who doesn't reason."

(Said document under discussion was then marked plaintiff's Exhibit 216 for identification).

"The Court: \* \* \* \* \* If they want to know what it is right now, we will have to read it out loud \* \* \* \* \*.

Thereupon plaintiff's Exhibit 216 for identification was read into the record, and is in words and figures following: [554]

"(In ink) Prepared by Mr. Twombly.

'The first Security Deposit corporation was organized in 1931 for the purpose of reorganizing the Railway Mutual Building and Loan Association. The latter company was rendered non-operative because of the building and loan situation existing at that time, together with

the check on operations because of the more stringent building and loan laws as compared with the regulation of general corporations.

To effect the transfer of securities and assets of the Railway Mutual Building and Loan Association it was necessary to procure the consents of its securities holders. For this purpose an extremely complicated Plan and Agreement was adopted whereby the said holders were to deposit their securities and receive in exchange therefor interim certificates. R. W. Starr, E. C. Thomas and L. S. Edwards were appointed as trustees and managers under the said plan. High pressure salesmen were then sent out to contact the securities holders for the purpose of procuring their consents to the proposed plan of reorganization. These holders were apparently promised and told anything and everything in order to obtain their consents. Those who consented easily got either what they were supposed to be entitled to in securities of the new company, or less. Those who were not so easily sold on the idea in many instances were given preferential securities. No plan of exchange of securities was consistently followed. The so-called Plan and Agreement was so long and so complicated that it was apparently understood by nobody, however, there is no doubt but that the trustees were extremely derelict in their duties.

After the expenditure of approximately \$60,000 of those investors' money, it was then de-

terminated that there was no law which would permit of the reorganization. Lobbyists were [555] then put to work to procure the passing of enabling legislation by the Legislature of the State of California. This was ultimately accomplished. Until approximately this time the affairs had been dominated and controlled by R. W. Starr, E. C. Thomas and J. L. Smale, and at this time J. H. Edgerton, an attorney, was added. It was still impossible to complete the reorganization because an insufficient number of consents had been obtained. To put the deal over a deal was made with Charles E. Kenner a graduate of Sing Sing prison for the misuse of other people's money and now in Folsom penitentiary for the same reason). Kenner was to obtain sufficient additional securities or consents to make the plan operative and was to receive approximately \$40,000.00 in good first trust deeds for which he had the option of trading Railway Mutual Building and Loan Securities or securities in the First Security Deposit Corporation face value for face value. At this time these securities were quoted at about 20 cents on the dollar. The transactions and all motions clearly show that any realization or acceptance of fiduciary relationship, between these dominating personages and these they purported to represent, was entirely lacking. Such a condition has continued throughout. Not only this, but the history of this set-up reflects that every strong personality con-



nected with these companies was attempted to work for the interests of the investors was ousted.

The reorganization was finally completed with approximately 20% of the investors staying in the Railway Mutual Building and Loan Association and about 80% high pressured into the First Security Deposit Corporation. The basis of the financial structure of the First Security Deposit Corporation was three classes of stock, and a great many varieties of collateral trust bonds. The First Security was to take 80% [556] of Railway Mutual Building and Loan Association assets and liabilities and the balance was to remain. The same amount of securities in the Railway Mutual Building and Loan Association were to be turned back to them for cancellation. The Building and Loan Commissioner of the State of California designated the segregation of assets, and the best 20% remained in the Railway.

The First Security Deposit Corporation issued bonds in the sum of approximately \$1,300,000, preferred stock (A and B) in the amount of \$274,460, and common stock in the amount of \$4,488. Of the latter stock Starr, Thomas and Smale controlled about \$3,350, and this was the voting stock. In this way control was carried on and \$3,350 controlled this \$1,600,000 corporation for a period of two years. At this time, inasmuch as no dividends had been paid on the preferred stock, the preferred stock be-

came the sole voting stock. However, this made no difference as at the time of issuance of the securities every investor was requested to execute a signature card. Some refused but the huge majority complied. On the reverse side of this signature card there was printed the following, "Proxy, I hereby appoint R. W. Starr, J. H. Smale, and E. C. Thomas, or any two of them acting in accord, as my proxy to vote my shares at all meetings at which I am not present or have a subsequent proxy, for a period of seven years unless revoked earlier. No statement or condition, verbal or written, other than herein provided shall be binding on the corporation."

No notice of any stockholder's meeting was ever given other than by publication in *The Daily Journal*, a Los Angeles legal newspaper, and which is not read by the public at large. Therefore, for all practical purposes, the control of the corporation remained unchanged.

[557]

The assets in the segregation were finally transferred effective as of January 1, 1934. The Board of Directors of the First Security Deposit Corporation consisted of R. W. Starr, E. C. Thomas, W. S. Brayton, A. R. Ireland, C. E. Perkins and Wm. Leffert and C. H. Berry. Berry and Perkins have subsequently resigned and Brayton has died. J. H. Edgerton was attorney. J. L. Smale remained in the Railway Mutual Building and Loan Association as president.

About this time a first trust deed held on the Reed Bros. Mortuary for approximately \$42,000 was in considerable trouble. Mr. Edgerton formed the R. F. D. Discount Co. (at first a partnership and later a corporation) which was conducted and operated in his office. The interested parties were Edgerton, Starr, Smale, Thomas, Berry, Laffert, Brayton, Ireland, also Aaron Johnson and Florence Anderson who were with the Railway Mutual Building and Loan Association. The R. F. D. Discount Company purported to act as go between in the settlement of this trust deed. Reed Brothers paid \$22,000 in cash into an escrow at the Title Insurance and Trust Company, \$17,800 of this sum was paid to the First Security Deposit Corporation in settlement of all liability under the trust deed. Edgerton retained \$1,000 as attorney's fee. R. F. D. Discount Company got \$3,200 for which each of the ten persons received a \$320 interest in the R. F. D. Discount Company. The only item showing on the records of the First Security Deposit Corporation is the receipt of the \$17,800. No attorney's fee to Edgerton is shown and no approval therefor was ever given by the First Security Deposit Corporation officially.

Early in 1934, a deal was made with Battell-Dwyer Company (a stock and bond concern). They were to have the exclusive right to buy securities of the First Security Deposit Corporation and were to be paid 5 points above

what they paid upon [558] delivery of the securities to the First Security Deposit Corporation. On many occasions it appeared they took more than five points, but nothing was done about it. Any sort of story or procedure was used to jockey the investors in the First Security Deposit Corporation out of their securities. The original price paid was in the neighborhood of 20 cents on the dollar for the bonds, and much stock was procured free on the representation that it was without value.

Included in the assets of the First Security Deposit Corporation was a house on Stearne Drive, Los Angeles, California, and was carried on its books as approximately \$7,500. Edgerton, in 1934, decided to buy the house. The First Security Deposit Corporation had acquired some of its own bonds, so Edgerton bought \$7,155.06 face value. These had been bought for \$2,206.64. Edgerton had these bonds deposited in an escrow where payment was to be made. In the same escrow, he had the papers transferring ownership of the real property deposited. In the escrow he borrowed approximately \$2,300 on the real property from the State Mutual Building and Loan Association. With this money he paid for the bonds and the costs of the escrow. The bonds were then returned out of the escrow to the First Security Deposit Corporation in payment of the property. The balance of \$2,021.29 remaining in the escrow was paid over to the First Security

Deposit Corporation in payment of the property. The balance of \$2,021.29 remaining in the escrow was paid over to the First Security Deposit Corporation in full payment for the bonds, or a cash loss on the bond deal alone of \$185.35. Approximately one year later, the First Security Deposit Corporation took back another piece of property located at 239 21st Place, [559] Santa Monica, California. Edgerton bought this property. He sold the Stearne Drive House for about \$4,500.00 cash. From Battelle-Dwyer Company and other sources, he purchased bonds of the First Security Deposit Corporation of a face value of \$11,750. The price paid was between 30 and 40 cents on the dollar. These bonds, together with the cash sum of \$110.44 was given by Edgerton to the First Security Deposit Corporation for the property. This resulted in a book loss on the property of \$372.72. The actual cash loss to investors of the First Security Deposit Corporation on these two deals is about \$7,000.00.

In the summer of 1934, auditors in checking bond purchases by the First Security Deposit Corporation from Battelle-Dwyer Company discovered that on approximately 1,000 shares of First Security Deposit Corporation preferred stock \$1.00 per share was added to the price charged for bonds and paid by the First Security Deposit Corporation, and the stock was delivered to Edgerton and Starr for the R. F. D. Discount Company. Battelle-Dwyer



Company refunded this money to the First Security Deposit Corporation and rearranged their deal with the R. F. D. Discount Company. R. F. D. Discount Company had now become the medium for acquiring all the stock it could of First Security Deposit Corporation. Practically its entire working capital consisted of the \$3,200 hereinbefore described. This stock carried voting control, and all of it would become very valuable if the bond holders could be chased out of the picture cheaply enough.

About this time Kenner decided he could use the Railway Mutual Building and Loan Association in some of his manipulations. He approached Edgerton for the purpose of purchasing about \$19,000 face value of securities which the First Security Deposit Corporation owned in the Railway Mutual Building and [560] Loan Association and had much to do with its control. It was arranged that the R. F. D. Discount Company would trade the same par value of First Security Deposit Corporation stock to the First Security for its securities in the Railway. This was done, although all holders of First Security Deposit Corporation stock were being assured by Battelle-Dwyer Company that it was worthless. Kenner then paid \$1,000 to R. F. D. Discount Company for an option to purchase the Railway securities. He didn't take up the option and forfeited his money. However, the Railway (with some assistance through the use of First Security money in pur-

chase of securities to get the necessary consents) subsequently became federalized and these securities were redeemable for 100 cents on the dollar. Sometime later P. S. Noon needed money in mining operations. He approached Edgerton and it looked like a very lucrative deal to him. He and four or five others made a deal (involving bonus, etc.) with Noon to procure the money for him. It appears that they borrowed about \$15,000 worth of the Railway Mutual Building and Loan Association securities from the R. F. D. discount Company and hypothecated their stock in the R. F. D. Discount Company to the R. F. D. Discount Company for the return thereof. Edgerton then hypothecated the Railway Building and Loan Association securities to F. E. Jones borrowing money from him which was loaned to Noon. The mining deal failed to come up to Noon's expectations and he is now endeavoring to pay off. Another ramification will be described later. Noon is apparently 100% honest, being a court reporter of excellent reputation.

In October, 1934, Edgerton had caused the formation of the State Investors Corporation, consisting of his father and one J. L. McSwiggan (a former employee of the First [561] Security Deposit Corporation, State Investors Corporation was entirely devoid of any financial backing, yet in October, 1934, the Board of Directors of the First Security Deposit Corporation agreed to enter into a contract where-

by it would sell \$187,020.93 book value of designated real property to the State Investors Corporation. The State Investors Corporation took immediate possession of the properties and was entitled to receive all rents. It had no obligation to make any payments, other than for taxes, for one year. It could pay for any individual piece of property by delivering face value of First Security Deposit Corporation bonds for book value of the property, or could pay in cash at the rate of 40 cents in cash for each \$1.00 of book value. This arrangement was so entirely bad and unsatisfactory to the First Security Deposit Corporation that the contract was cancelled by mutual consent after about six months.

Dar Knowled, son-in-law of J. L. Smale, purchased a property from the First Security Deposit Corporation for about \$1,000 cash. He immediately borrowed an amount from the State Mutual Building and Loan Association sufficient to return the \$1,000 and buy furnishings for the house. It is believed that the property was subsequently sold at a handsome profit. Some such deal was also made with another relative (father or father-in-law) of J. L. Smale.

Through the efforts of Battelle-Dwyer Company and others approximately \$700,000 worth (face value) of bonds of the First Security Deposit Corporation were acquired and retired, up to the time Battelle-Dwyer Company

became more or less inactive in the field. It was an extremely lucrative deal to them, a great deal of the bonds having been acquired through the trading of other securities therefor. [562]

In 1935, the Investment Finance Company was organized and operated in conjunction and out of the same office with the First Security Deposit Corporation. Its original capitalization was exceedingly small, the First Security Deposit Corporation being the main holder of stock with the purchase of \$1,000. This it still holds. Subsequently all of the R. F. D. Discount Company holdings were sold to the Investment Finance Company and the proceeds distributed and the corporation was dissolved. This included the Railway Mutual Building and Loan Association securities which had been pledged. In order to cover this item these same individuals hypothecated their holdings in the Investment Finance Company (which they had acquired by purchasing stock in the Investment Finance Company, with the money received from the sale of R. F. D. Discount Company assets to the Investment Finance Company.) Stock was put up as follows: Starr 2500 dollars, Mary Starr Brayton (widow of W. S. Brayton) 5000 dollars, Ireland 5000 dollars, Edgerton 1666 dollars, Anderson 1200 dollars, Thomas 1160 dollars. Some of the R. F. D. Discount Company holders did not put their entire receipts into the Investment Finance Company.

The Investment Finance Company has financed its operations by borrowing from the First Security Deposit Corporation. At the present time Investment Finance Company owes First Security Deposit Corporation about \$275,000 which it has borrowed on an open account not even giving notes therefor.

The Investment Finance Company has engaged in many activities most of which have resulted in frozen assets. A loss of about \$25,000 was had on an oil well deal with Kenner. This deal was consummated by Edgerton. Considerable losses were obtained in the automobile business, one [563] deal being the backing of Kenner. Deals with Kenner have cost about \$75,000.

The Investment Finance Company took over the purchase of First Security Deposit Corporation securities. It borrowed money from First Security Deposit Corporation and purchases its securities from its investors. The bonds it purchased below face value are either still held or have been turned over to the First Security Deposit Corporation at full value (including accrued interest). The stock it purchased was kept and held for purposes of control of the First Security Deposit Corporation. Letters were written to First Security Deposit Corporation investors telling them First Security Deposit Corporation was in liquidation, and so forth. One C. L. Cronk was employed for this purpose. This was over the opposition of



at least one director who stated he believed the writing of such letters was contrary to the Federal Securities Act, and also was possibly using the mails to defraud. No attention was paid to this except that a committee was appointed to handle the matter and consisted of Starr, Thomas and Cronk. Later Edgerton succeeded Thomas. Edgerton finally decided that no letters should be written out of the State of California. The Investment Finance Company through this procedure, and through the R. F. D. Discount Company purchase, has acquired about \$100,000 par value of First Security Deposit Corporation preferred stock and about three-fourths of the common stock.

Edgerton became interested in the Western Brick Company and caused the Investment Finance Company to invest about \$30,000 therein, besides loans by the American National Bank of Santa Monica. He, Starr and Thomas, acquired some free stock for themselves in the transaction. This company [564] was revamped and the assets were sold to the Pacific Brick Company, thereby freezing out minority stockholders in the Western Brick Company. The company has operated at a loss since acquisition.

Edgerton, with Battelle-Dwyer Company, then presented a deal involving the American National Bank of Santa Monica to the Investment Finance Company. The bank had a capitalization of \$100,000 and a purported sur-

plus of about \$22,000. Assets listed consisted partially of a building valued at \$84,000 and furniture and fixtures valued at \$17,000, both actually worth not more than \$50,000, giving a real approximate value of \$71.00 per share. The Investment Finance Company purchased 100 shares at \$150.00 per share and loaned Battelle-Dwyer Company \$150.00 per share on 167 additional shares. The balance necessary to constitute control of the bank was sold to clients of Battelle-Dwyer Company after a voting trust had been formed wherein Edgerton and Dwyer were voting trustees. Battelle-Dwyer Company was unable to pay the loan, going out of business, and the Investment Finance took over the stock. The Investment Finance Company now has about \$54,000 invested in stock of the bank, and it does not seem possible that any dividends can be paid for several years. One director of the Investment Finance Company went on the bank board and stayed about two months. He claimed something was wrong somewhere in the set-up, including the management of the bank, and should be thoroughly gone over. Edgerton and Starr decided Starr should go on in the fault finders place to represent the Investment Finance Company on the bank board. Six months later, after much unnecessary money had been spent by the bank, the management of the bank changed. About two years later the bank examiners found that the building had been writ-

ten [565] up from \$1.00 to the value shown on the balance sheet and cash dividends paid on the surplus accruing from the write-up. This happened shortly prior to the advent of the Investment Finance Company into the picture. It is now necessary that additional funds be put into the bank to rearrange the capital structure to clear up the capital impairment that exists. Edgerton and Starr are now directors on the bank board.

In connection with the bank, another corporation was formed, the American Building and Investment Company. This operates in conjunction with the bank being used as a spring board. Investment Finance Company has invested about \$20,000 in this venture which has not as yet shown any huge profits.

One W. P. Bonds next came along and sold Arnold Eddy (associated with Edgerton in the California Federal Savings and Loan Association) and Edgerton on the dog food business. The Investment Finance Company decided to go for the deal. When building was discussed only one individual wanted to build on a strict contract basis. Instead it was a cost plus job had cost many times the original contemplated price. Approximately \$60,000 has been invested in this venture.

None of these ventures has made any profits and the possibilities of ever making any are exceedingly remote.

This frenzied finance and extreme misman-

agement results in a loss to the investors in First Security Deposit Corporation between \$300,000-\$400,000.

Edgerton is attorney for all of these companies and actually runs them. He is manager of the First Security Deposit Corporation, Investment Finance Company and the California Federal Savings and Loan Association. Attorneys [566] fees paid by the Investment Finance Company and the First Security Deposit Corporation (prior to the time Edgerton became manager) for the period January 1, 1934, to April 1, 1938, were about \$15,000. \$5,000 would be excessive.

In order to qualify Miller, Hollowell, Starr and Edgerton as directors of the American National Bank, it was necessary that they have stock in the par value \$1,000 and execute affidavits that this stock belonged to them free and clear and was unhypothecated in any way. The Investment Finance Company delivered to each of them the necessary stock and took from them promissory notes in the sum of \$1,500 (the amount paid for it by the Investment Finance Company). There was no intent on the part of any of them to pay for the stock. Edgerton's and Starr's stock is held in the office of the Investment Finance Company assigned in blank by virtue of a separated assignment attached to the stock for easy removal in case of inspection. The same is true of Miller and Hollowell except that it is held in a safe de-

posit box in the bank. There is a gentleman's agreement that no effort will be made to collect around the requirements of the government the notes. This is merely a subterfuge to get around the requirements of the government.' " [567]

"Mr. Lawson: \* \* \* There is nothing in that document that would constitute its acceptance in evidence.

The Court: I will be glad to hear from plaintiff's counsel on that one particular point.

Mr. Adams: All right.

Mr. Campbell: If your Honor please, my position in this matter is very similar to your Honor's last statement; that is to say the narration of these events by Mr. Twombly constitute admissions on his part, first, as to his knowledge of those events at the time they occurred, bearing in mind the foundation which I have yet to lay; secondly, that he had knowledge of the existence of a scheme to defraud, as shown in this document, and that he knowingly joined in that scheme.

The manner in which these events are related and the substance of these events, I believe, constitute admissions against his interest in this statement.

I think that covers the plaintiff's position.

Mr. Lawson: It doesn't help me, your Honor, because that is just a repetition of the statement made yesterday. What I would like



to know, your Honor, for example, the question of knowledge, wherein does that document show that Twombly had that knowledge during the existence of the conspiracy? I don't see that."

(Thereupon the following proceedings were had in the presence of the Jury.)

---

PHYLLIS VORIS,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified as follows:

Plaintiff's Exhibit 180 for identification, attached to [568] the file of the Pierce Petroleum Corporation, is a record maintained by the Corporation Commissioner of the State of California; it is a record which is kept by the Corporation Commissioner in the discharge of the functions of his office; that it is the course of business of the office of the Commission to keep and maintain that record. My testimony would be the same with respect to plaintiff's Exhibit 12, 13, 14, 15 and 143 for identification. Those records are all kept in the regular course of the business of the State Corporation Commissioner and under my jurisdiction.

"Mr. Lawson: Those are all subject to the same objection of hearsay, not connected up and not within the issues of this case.

The Court: Yes."

C. E. WEBSTER,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, testified as follows:

The conversation I had with Mr. Twombly with respect to the statement, plaintiff's Exhibit 216 for identification, was on the 9th day of July, 1940.

"Mr. Irwin: I think there should be the formal objections to any conversation on the ground of hearsay \* \* \*.

"The Court: It is my understanding that you are introducing this evidence of conversation as applicable to and binding only upon the Defendant Twombly?

Mr. Campbell: Yes, I so stated yesterday.

The Court: Gentlemen of the jury, the following conversation which is apparently about to be revealed by this witness is not to be considered by you as applicable to or binding upon any of the other defendants than the Defendant Twombly.

I might say to you that it is a fundamental principal of law that a statement made by one alleged co-conspirator [569] after the termination of the conspiracy, insofar as he is concerned at least, is not in furtherance of the conspiracy, and is a mere narration of past events and past happenings, and it would seem to the Court for many generations to be very unjust to permit a man to make a statement in which he might involve a lot of his co-conspirators or co-defendants in a lot of mat-

(Testimony of C. E. Webster.)

ters and they would have no opportunity to cross examine him or to defend themselves. So that the Courts have properly, in the interests of justice, held that such statements that I have indicated are binding only as admissions upon the defendant who made them and are not applicable to the other defendants. You are so instructed."

The witness further testified: I had previously made an appointment with Mr. Twombly over the telephone to meet me at this time; and in response to the telephone conversation, he came to my office. I first handed that document to Mr. Twombly, and asked him if that was a statement which he had prepared and handed to Inspector Van Meter; he said it was. He further stated that the information contained in that document came to his attention while he was associated with the First Security Deposit Corporation and the Investment Finance Company, and that he wrote the statement from memory without having the records before him to refresh his memory, and that there might be a slight error in some of the figures in the document, but that it was substantially the facts.

"Mr. Campbell: I will now offer this Exhibit in evidence as plaintiff's Exhibit 216."

(Thereupon the Jury retired and the following proceedings were had in their absence.)

"Mr. Irwin: In the event your Honor rules that this statement may be received as to the

defendant Twombly only, I believe that a motion for a severance should be made on the following grounds: [570]

The Court: You make this motion now applicable to the time that it is admitted?

Mr. Irwin: Yes.

The Court: It may be so stipulated?

Mr. Campbell: So stipulated.

Mr. Irwin: This is a motion made on behalf of the following named defendants individually, on behalf of the Defendant Starr, Smale and Thomas. I respectfully move, on behalf of those defendants individually, for a severance from this trial on the following grounds:

That the evidence contained in plaintiff's Exhibit 216, though it is competent or might be competent as against the Defendant Twombly, is incompetent, hearsay, and prejudicial to the rights of the Defendants Smale, Thomas and Starr individually, and that its admission deprives the defendants of a fair and impartial trial to such an extent that no admonition to the jury would remove the prejudice created by the reception of that exhibit, 216, in evidence. \* \* \*

\* \* \* what was the situation with reference to the knowledge that such a statement might have been made by one of the defendants?

I have conferred, of course, with Mr. Lawson, and we have been cooperating together so he he may want to elaborate on what I say with reference to himself.

But speaking for myself, your Honor, when the indictment was returned, and when I was retained in the case, I was advised and told by my clients that they didn't trust Mr. Twombly, that they didn't want to cooperate with him in connection with the trial because there had been considerable friction and considerable hard feelings, and that he had been discharged from the company under very [571] unhappy circumstances, they didn't wish to collaborate or to cooperate, and to watch him. That, in effect, was the admonition.

As we got into the investigation of this case, word was sent to Mr. Edgerton by mutual friends of Mr. Twombly, that his attorneys should certainly cooperate with him and that there was no hard feelings, what is gone is gone, and everybody was in the same boat, and and that he wanted to get together.

Whereupon Mr. Lawson arranged a conference, I believe first which was attended only by Mr. Adams—I may be wrong in that—whether Mr. Twombly was at the first one or later. I was not at that first conference.

As I stated, this word had come to us, and we understood that Twombly had been assisting the post office inspectors in the investigation of the case. What we wanted to know—we understood that there was prejudice and hard feeling—but what we wanted to know before we considered any collaboration and likewise whether or not we should consider a motion for



severance—which had to be supported by affidavits—was whether or not Mr. Twombly had made any written statement of any kind to the post office inspectors or to the United States Attorney which would implicate or involve or cast discredit and which might be admissible in evidence in this lawsuit.

Mr. Adams advised Mr. Lawson—understand, there is no criticism of Mr. Adams; I am confident from what he tells us he is as surprised as we are—Mr. Adams told me, not once but on several occasions, that he had interrogated Mr. Twombly time after time, and that Mr. Twombly had assured him that there wasn't any, and that he, [572] Mr. Adams, was satisfied that Twombly, in fact, had made no statement.

Twombly told me he had made no statement. As late as yesterday afternoon, at the recess, when we went out in the hall, he said 'You won't find a thing damaging to your clients in that statement.'

\* \* \* \* \*

I would like to submit to your Honor in this connection that those two cases show this, that it should be a matter for your Honor's consideration if the evidence were presented, either in the form of affidavits or on sworn testimony, if from that your Honor would deduce—naturally, if we had made the motion for a severance before the trial started, after the inquiry and the research we made, we would have had no grounds. We wouldn't have made any

affidavit, and wouldn't come in before the Court to make an affidavit that there was an antagonistic defense, when we were assured, No. 1, by the attorney for the defendant and, No. 2, assured by the defendant himself who, though indicted, is a member of this bar, and therefore was extended the courtesy as to other attorneys, that he would come in and collaborate on a defense weeks before the trial, and attend meetings accept our analysis of briefs and one thing and another, trade points back and forth at these meetings—in other words, there was nothing which would justify the granting of a motion for severance before this jury was impaneled. We could have made no showing to the Court.

\* \* \* \* \*

I believe it is very persuasive that this statement of itself indicates that the defenses, and that are now for the first time known to us, is clearly hostile and [573] clearly antagonistic.

Now, as to the prejudicial nature, may it please the Court, even though it is restricted as to the Defendant Twombly, I will ask your Honor's consideration of this fact: Would your Honor say that in our duty to our clients, that even though your Honor restricts this statement to the Defendant Twombly, that we could go on and present the defense in this case, which would ignore, before the jury, the accusations and charges made by the defendant

Twombly? The question suggests its own answer.

For example, your Honor, we would have the burden of showing that in the fore part of that statement, Mr. Twombly leaves out that Mr. Edgerton had nothing to do with it; that Haight and Trippet were the attorneys who organized that, and that H. F. Dunton, the man who outlined the plan, had just recently resigned as Deputy Building and Loan Commissioner.

We would have the burden of showing that Mr. Twombly initiated the Pierce Petroleum loans and initiated the dog food plan.

I say to your Honor, as opposed to the question of the prejudicial nature, I think it suggests its own answer.

Doesn't your Honor, as an experienced lawyer, believe that no matter what your Honor's instruction may be, that if we didn't come back and disprove everything that he said—and another thing, your Honor, this matter before us, that isn't an admission; that is a complaint that this man initiated it. Now it appears for the first time that that is why we are here.

This man in his antagonism against these co-defendants, after he resigned, built this thing up and sent it in to [574] the postal inspector and that started it. It is not an admission; it is his complaint against these people.

Now, then, what it amounts to, I respectfully submit is a second indictment we have to meet.

It includes charges, as the Court pointed out, that are not contained in this indictment.

\* \* \* \* \*

Mr. Lawson: Your Honor, might it be considered that the same motion that was stated by Mr. Irwin, that it may be made on and in behalf of the Defendants Edgerton and Ireland and on the grounds therein stated, that prejudice will result in the trial of Edgerton and Ireland, and of such character that no instruction or limitation by the Court as to proof will cure the prejudice; and as a result they will not have a fair and impartial trial.

The Court: It may be stipulated that the same motion may be deemed to be made as to those defendants.

Mr. Campbell: So stipulated.

\* \* \* \* \*

Mr. Lawson: The vice in this situation is this: That the statement, as made by Mr. Twombly, is, in the form of an accusation, or a complaint against the defendants, and particularly as to the defendant Edgerton. Ninety per cent of that statement is a scripture against Edgerton in so many words; in so many words it says that he is guilty of this, that, and the other thing, stating a long series of conclusions, not a statement of fact.

Presuming for the moment that up until the time of the trial that everything was done properly; that is, a proper course of conduct was taken by counsel in regard to the protecting of

the right of the client, which I am satisfied was, and I might say, incidentally, there, that [575] I am familiar with the rule that ordinarily a motion for severance is not granted. \* \* \* I wouldn't make that motion unless \* \* \* I had \* \* \* strong reasons to support my application, otherwise, we would be merely making a frivolous motion." [576]

"Here is the situation that we find ourselves in: As I stated to Your Honor yesterday, that having heard statements of a character that Twombly may have said something derogatory about the Defendant Edgerton, I believe I discussed this with Mr. Campbell and Mr. Campbell said in a jocular vein, said, 'Well, what we have on Twombly,' and so forth. I think that is a correct statement. I think in the same vein I asked him what it was, and he said, 'You will hear about that later.' Is that about the effect of it, Mr. Campbell?

Mr. Campbell: I don't recall the exact language, Mr. Lawson.

Mr. Lawson: Bearing in mind that there might be some basis there for a different defense, I went into the matter first with Mr. Adams and discussed it with him, and then I suggested that Mr. Twombly come to my office, and Mr. Adams and Mr. Twombly came to the office. I think we met at 7:30 in the evening, and left about a quarter to 12:00 or 12:00.

I took my gloves right off, and put in a very



blunt form of question, and told him exactly what I had been informed, and that I wanted to know, because if he had made the statement, well and good, that was past, and there would be no argument about it, but I wanted to know, so that the way the case should be handled would determine largely by his attitude in the case.

Now, right there, Your Honor, the difference would be this: If he was to be cooperative, as he said he would be, and if he hadn't made any statement of a damaging character against Mr. Edgerton, we rely upon that. Then we rely upon him to develop that part of the case, which is pertinent to him.

Let me make that more clear. The case, as I see it, is divided into really three parts. [577]

The case is like Gaul, it may be divided into three parts. The first part would be the organization work. That is the conversion from the old Railway Mutual to the First Security, which plan was consummated about January or February of 1934.

Then from 1934 there was a sort of a quiescent period there where nothing much was done until Mr. Twombly became general manager for the First Security, which was from November, 1934, when he became our manager until October of 1938, when he resigned, or was discharged (the statement has been made here). But, anyway, he severed his connection at that time.

Then, after that, Mr. Edgerton assumed the

general managership, and went through the process of dissolving or I mean to clean up everything and turn the assets back to the First Security, liquidating the balance in the trust and closed everything.

Now, over the period of time when Mr. Twombly was general manager is the time of the greatest activity, and as a matter of fact, every indictment letter, that is the 14 count of the indictment, I may be wrong as to the last count, but it couldn't be more than one, I think it is all 14, occurred during the time Mr. Twombly was connected with the companies.

Now, Your Honor, Mr. Twombly, as I knew, and I learned, of course, during our discussion that evening, is not only a lawyer, but he is an accountant. He kept the books during that period of time. He not only kept the books, but he made the audits, and he had complete charge, and supervision of the business during that period of time.

Now, when we discussed it that evening, because I told him very frankly, after I was assured that nothing of [578] a damaging character, no damaging statement had been made, and that he would fully cooperate, said, 'You are just the man to take care of that period, because of your particular knowledge and skill, and on all questions relating to that period we are going to look to you to take care of.' That was the understanding we had, and I relied upon it all through the preparation of the case, and during the trial of the case.

This, of course, comes like a bomb. I can't orient myself to any plan that we could conduct the case on as to Mr. Edgerton fairly, so that his interests would be protected, because that covers a period of time when the greater part of the activity occurred." [579]

"The Court: Now, let me ask you just one question: Suppose that Mr. Twombly had said to you yesterday 'Gentlemen, whether you like it or not, I have made up my mind that I am going on the stand, and I am going to answer every question that anybody asks me about this matter;' would you be in any different position?"

\* \* \* \* \*

Mr. Irwin: \* \* \* The defendant can take the stand and have the opportunity of cross-examination. It comes for the first time, and he puts in his direct testimony, and it must be evidence and not conclusions. You have an opportunity to object to every question as he goes along, and he is confined to legal competent evidence. Now, this statement contained all kinds of conclusions \* \* \* If he took the stand he would not be able to state that Starr, Smale and Thomas violated their trust, the trust of those depositors, because that is hearsay, clearly as to him. There is nothing in the books. Plaintiff's counsel hasn't shown a thing that Starr, Smale and Thomas violated their duties,

that they had been running around indiscriminately getting the security holders signed up.

All that stuff that he refers to in '31, '32, and '33, the most damaging kind of things, Your Honor, which are the rankest hearsay on his part, because he doesn't come in until '34.

I think those are two points upon which Your Honor's hypothesis may be distinguished.

Again, in that connection, his manner on the stand, the usual instruction that the jury has, our cross examination proving the falsity of his statements, providing we can, would be checked and counter checked by a [580] restriction, so that we got only competent evidence; and that the full story would be there at one time instead of going in this way that the burden is upon the defendants of taking something, which is not admitted as against them, and cannot be received as against them, and refuting the whole thing in addition to what is in the indictment.

\* \* \* \* \*

The Court: \* \* \* Now, on this question of intent, if it is introduced for that purpose, is it not proper to introduce the whole document, regardless of where the chips may fall, on the ground that it shows the state of this man's mind, in getting at the intent, when he was connected with these companies. The various things he believed, whether they were true or not, if he believed that what we might describe as monkey-business was going on there, and he

so states in his statements, it is the condition of his mind to show his intent which is being brought out and therefore the scope is broadened to that extent possibly. \* \* \*

My only question to you is: Does it make a particle of difference whether he got it from the books, whether he got it from Kenner, whether he got it from Mr. Edgerton, or whether he didn't get it from anybody, whether he had a dream and he got it out of a dream? Is it not admissible to show what he thought, whether it was true or whether it was false? \* \* \*

I have made up my mind that my ruling will be that there shall not be a severance. \* \* \*

[581]

"I want, however, that counsel should be privileged to preserve the point, and I shall be willing to receive and permit them to file, for what they are worth, any affidavits that they may want, the motion having been made and by stipulation of counsel applicable to the situation just as though it had followed the testimony of this witness and the reading of this document.

Mr. Irwin: I appreciate and respect the Court's statement. Might I ask your Honor whether this wouldn't eliminate unduly encumbering the record and likewise preserve our point, that if Mr. Lawson and I were permitted to be sworn and take the oath, and then state the statement given this morning is true in all respects, to the best of our knowledge,



therefore that that would be in effect out testimony without encumbering this record with affidavits?

The Court: I am perfectly willing to have you, in lieu of affidavits. I hate to put you to the trouble of preparing those affidavits and you may both stand and be sworn and we will just put this on the record that the Circuit Court of Appeals may have it.

---

J. J. IRWIN and GORDON LAWSON

having been first duly sworn, were examined and testified as follows:

The Court: Was the statement that you made this morning true as to the facts which you gave in connection with the motion for severance, Mr. Irwin?

Mr. Irwin: It was, you Honor; in substance, each and every one of the facts related are my recollection.

The Court: So far as you know at the present time, there are no corrections or errors in that statement of facts?

Mr. Irwin: That is correct.

The Court: In so far as the statement purported to [582] indicate any knowledge on your part or any contact on your part, was it true?

Mr. Lawson: True, your Honor.

The Court: You have no correction to make?

Mr. Lawson: No corrections.

(Testimony of J. J. Irwin and Gordon Lawson.)

Mr. Irwin: There is this further point, which is a corollary. So it may be preserved, may it be stipulated that the motion has been made and that it is denied and exception is granted?

The Court: Yes.

Mr. Irwin: There is this other motion to-wit, the motion is now made, may it please the Court, on behalf of the defendants Starr, Smale and Thomas, individually, for themselves, that this Honorable Court withdraw a juror and thereupon declare a mistrial because of the introduction and the receipt of Exhibit 216? That is to complete the transaction.

The Court: The same motion as to your client?

Mr. Lawson: Yes, on behalf of the defendants Edgerton and Ireland.

The Court: The motion will be denied, exception.

Mr. Irwin: May it be considered, your Honor, that these motions were made in a proper sequence following the receipt of 216, and I think this point should be raised, your Honor.

The Court: Just a minute. May it be so stipulated that the motions may be deemed to be made in their proper sequence?

Mr. Campbell: So stipulated.

Mr. Irwin: Your Honor, in this connection, with reference to 216, there has never been

(Testimony of J. J. Irwin and Gordon Lawson.)

any formal objection stated on behalf of the defendants; in other words, your Honor was good enough to consider a motion for severance on the [583] assumption that it was in evidence, so whenever your Honor thinks it is appropriate, and while the jury isn't present, I think the objection should be made.

The Court: Make it right now because I am going to bring the jury down.

Mr. Irwin: Your Honor will recall that our principal contention is that this is not an admission or a confession. Your Honor appreciates that is our statement. \* \* \* Respectfully I ask leave \* \* \* to examine the witness Webster \* \* \* for your Honor's determination of whether it is an admission or a confession.

The Court: You may go ahead with your voir dire examination."

---

C. E. WEBSTER,

recalled as a witness on behalf of the plaintiff, having been previously sworn, testified as follows:

Voir Dire Examination

By Mr. Irwin:

Mr. Twombly handed plaintiff's Exhibit 216 for identification to Inspector Van Meter.

"Mr. Irwin: Your Honor, objection is made to the reception of Exhibit 216 for identification, specifically and individually, on behalf

(Testimony of C. E. Webster.)

of the defendants Starr, Thomas and Smale, on the grounds that although the offer is limited to the defendant Twombly and the evidentiary matter contained in that Exhibit is incompetent as against them, that nevertheless its being received only towards Twombly, that the nature of the Exhibit is so prejudicial to the rights of the several defendants that I have mentioned and it deprives them of a fair and impartial trial to such an extent that no admonition to the jury can or would remove the prejudice created by the reception [584] of that document.

I think I have covered the grounds. Thank you, your Honor.

Mr. Lawson: I want to join in that objection, your Honor, and add to it, on behalf of the defendants Ireland and Edgerton, that there is no evidence in the case that connects up either of the defendants Edgerton or Ireland with the scheme or conspiracy, as alleged in the indictment, and that this is an attempt by indirection to make a connection between those defendants with the scheme and conspiracy as alleged.

\* \* \* \* \*

Mr. Irwin: Your Honor, I think I should add that the statement in addition is prejudicial because it contains matters which are not contained in the issues of the indictment, and that it includes matters which are clearly only hear-

(Testimony of C. E. Webster.)

say as to the defendant Twombly and could not be binding on the defendant I represent.

Mr. Lawson: I wish to adopt that and add to it that it touches on matters that have already been limited to a point, that this statement goes beyond that limitation. As a matter of fact, that it admits evidence that the Court has already ruled to be objectionable.

The Court: The objection will be overruled.

The rule of the Court is that that limitation does not apply to the offer, as limited, or are the objections sound under the offer as limited, to not only the defendant Twombly but as to the intent of the defendant Twombly."

(To which ruling of the court, an exception was duly taken.)

(Thereupon said statement was received in evidence and marked plaintiff's Exhibit 216.) [585]

"The Court: Gentlemen of the jury, we have here admitted in evidence a document which will now be read to you by counsel for the plaintiff, the document having been admitted for a very limited purpose.

You are all very intelligent men, and I believe are capable of following the directions of the Court as to the law involved and that you will do so, of course.

We have here a statement which the evidence shows was made by the Defendant Twombly on the 9th of July, 1940, some year and a half



after the conspiracy, insofar at least as the Defendant Twombly is concerned.

Mr. Campbell: Pardon me, your Honor. May I correct the Court?

The Court: Yes.

Mr. Campbell: Your Honor stated that the evidence showed that the statement was made on the 9th day of July. The testimony was that the conversation relative to the document was on that date.

The Court: Quite right. I stand corrected. I remember that now.

The witness testified that Mr. Twombly stated to him on the 9th of July 1940 that he had previously made this statement to a Mr. Van Meter.

Mr. Adams: Isn't that a little different? \* \* \*

The Court: Well, he handed the document to him. Yes, I think probably it is.

Mr. Adams: When it was made, or where, there is no testimony.

The Court: It was made by him and handed to Mr. Van Meter.

Now I might think that John Doe and Richard Roe and Bill Smith and Mary Grab were the dirtiest bunch of crooks in the world, and I might take an action predicated upon that feeling. [586] it might not be true at all. And what I thought about these people might be no

evidence at all as to what they actually were, or as to what I thought had occurred.

We describe this as a narration, as a narrative of what has happened in the past. Now that document isn't evidence which you may properly consider in any way, shape, or manner, as against any defendant in this court room, including the Defendant Twombly, except to show his intent in connection with the crimes charged. It is expressly limited to that.

To illustrate: Whether or not those things were true or false would be immaterial so long as the Defendant Twombly thought they were true. If, thinking they were true, he did certain things, then they are admissible to show his intent under certain circumstances.

Now it is very important, in all fairness to these other defendants and to the Defendant Twombly himself, that this document, which contains statements about a lot of different matters, is only admitted for the purpose of showing Twombly's intent, and is no evidence whatsoever, and must not be considered by you, as to the truth of the statements made in this communication.

Now we can't try every defendant by himself and go very well through several different trials occupying several weeks. We can't always permit that. We do permit it under certain circumstances where we feel that there is no other course to pursue.

We have felt it possible to try these defendants together. We still feel so. And I shall have occasion again to call your attention to this limitation, but I wanted to put it in very definite terms to you before it was read. [587]

You may proceed.

Mr. Adams: Pardon me, your Honor. That document has been received subject to those objections and a motion to strike?

The Court: Subject to the objection and the motion.

Mr. Irwin: Pardon me a second. I don't remember if we were given an exception to the objection.

The Court: Yes, Exception as to all of them." [588]

(Thereupon said plaintiff's Exhibit 216 was read to the Jury. Said Exhibit has been set forth hereinabove in full in connection with the arguments had concerning its admissibility.)

---

### C. E. WEBSTER,

resumed the stand and further testified as follows:

I secured certain books and records from the Security Deposit Corporation. Plaintiff Exhibit 217 for identification is the file marked "Valerie Mountain," which came into my possession in the course of my investigation; I obtained that file from the offices of either the First Security Deposit Corpo-

(Testimony of C. E. Webster.)

ration, or the Investment Finance Company, which are conducted jointly at Wilshire and Houser Boulevard, Los Angeles. The two documents which you show me were in the file, plaintiff's Exhibit 217 for identification, when it came into my possession.

(Thereupon, the plaintiff offered in evidence one of said documents marked plaintiff's Exhibit 218 for identification, the same was received in evidence over the objection that the same was hearsay, no proper foundation laid and immaterial, and an exception was duly taken.)

Said Exhibit is in words and figures following:

[589]

"I will read plaintiff's Exhibit 218: "

'March 2, 1934.

J. L. McSwiggen:

You are authorized and directed to complete the Knowles deal this afternoon. Do this without fail.

Miss Long will give you sufficient bonds to cover same.

R. W. STARR.'

Mr. Adams: Your Honor, may I interrupt again before he goes on?

Your Honor, I think that instruction to the jury should be amplified in this, that it likewise does not come within that portion of the indictment—and now I am reading again in the lower left-hand corner of page 20—with reference to the letters, your Honor, that the defendants represented and pretended that it was or-

ganized for the purpose of duly engaging in liquidation, and so on.

Now as to that, on the next page of the bill of particulars, Item 8, and the Court's ruling, in answer to that the plaintiff has set out the matter on page 22 and 23, and I call your particular attention to page 23, line 25, 'The plaintiff will refer to approximately 36 letters,' written at certain dates.

And then on, page 24 and 25 are the letters so indicated. Certainly this letter to Mr. McSwiggen and the other letter that counsel is now offering are not within that portion of the indictment.

The Court: The jury is instructed that the last exhibit called to their attention, which was just read, is not to be considered as binding upon or applicable to the Defendant Twombly insofar as this allegation in the indictment is concerned: [590]

'That the said defendants at all times represented and pretended that said First Security Deposit Corporation was organized for the purpose of and was duly and actively engaged in the liquidation of the said assets received by it from the Railway Mutual Building and Loan Association; whereas in truth and in fact the defendants, and each of them, then and there well knew that no such liquidation was, in fact, being carried into effect and the said defendants



were, as hereinabove alleged, converting said assets to their own use and benefit.'

Mr. Campbell: I am now going to read from plaintiff's Exhibit 24 of the books and records of the First Security Deposit Corporation.

I am reading from the journal, page 80, of Exhibit 24, the journal of the First Security Deposit Corporation.

'A debit item of \$2,155.87, August 3, profit and loss on real estate sold, O. T.

A debit of \$88.72 reserve for depreciation.

A credit of \$2,244.59, with the statement, "Real Estate No. 878, R-126, sold to R. D. Knowles, cash in amount of \$822.50 received on deal, \$11.17 to pay repair costs and balance of \$811.33 as full payment of deal, Mr. Knowles paying taxes and assessments due." ' ' ' [591]

---

DENNIS S. TAYLOR,

called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Prior to the year of 1932, I was an investor of the Railway Mutual Building and Loan Association.

"The Court: Is this another one of the investors?

Mr. Campbell: This will be the last one.

The Court: Same objection as to all defendants; same ruling."

(Testimony of Dennis S. Taylor.)

I transferred or exchanged my holdings in the Railway Mutual Building and Loan Association into the securities of the First Security Deposit Corporation at or about the year 1932; thereafter, from time to time I received communications from the First Security Deposit Corporation and from the Investment Finance Company. I received plaintiff's Exhibit for identification 168, a letter dated January 26, 1938, through the mail.

"Mr. Campbell: This will be offered as plaintiff's Exhibit 168.

Mr. Irwin: Same objection, the same ruling went as to all defendants as to this line of testimony.

The Court: Yes."

(Said letter was received in evidence and marked plaintiff's Exhibit 168, and is separately certified pursuant to stipulation and order of Court.)

The witness further testified: I have received plaintiff's Exhibit 160, a letter dated July 1, 1938, through the mail; at the time I received it, it was in an envelope. There was a cancelled postage on that envelope.

(Said letter was received in evidence and marked plaintiff's Exhibit 160, and is separately certified pursuant to stipulation and order of Court.)

The witness further testified: I received plaintiff's [592] Exhibit 165 for identification, a letter dated October 26, 1938, through the mail; it was inclosed in an envelope, which envelope bore my name and address on its face; there was cancelled

(Testimony of Dennis S. Taylor.)

postage on the envelope. I did not keep the envelope; I destroyed it. My testimony in regard to plaintiff's Exhibit 165 for identification would apply to plaintiff's Exhibit 160, as to the envelope.

(Said letter, plaintiff's Exhibit 165 for identification was received in evidence, said Exhibit is separately certified pursuant to stipulation and order of Court.)

Cross Examination

By Mr. Irwin: [593]

Q. Now, the securities that you had in the First Security Deposit Corporation, which you received in exchange for your securities in the Railway Mutual, consisted of a \$1100 full paid prior bond of the First Security; and a cumulative prior bond in the amount of \$86.08?

A. The first, yes. Series A.

Mr. Irwin: May our stipulation be in effect as to this man too, Mr. Campbell?

Mr. Campbell: I think we can enter into a general stipulation. Interest of the First Security Deposit Corporation on those securities, on which they were required to make semi-annual payments.

By that I don't mean that they were always paid on the date due but all interest was paid.

Mr. Irwin: That is perfectly satisfactory.

The Court: The stipulation may be received.

Mr. Irwin: Except in the individual cases where we may want to state the amounts, as the record shows, subject to correct.

(Testimony of Dennis S. Taylor.)

By Mr. Irwin:

Q. Mr. Taylor, you sold those securities in October 1938 for \$1,008.16, is that right?

A. Yes.

Mr. Irwin: Then, your Honor, pursuant to stipulation, I desire to state that the record shows that on the full paid bond the witness had received, up until that time, \$363.00. By way of interest. And he sold the full paid bond in the face amount of \$1100, and the cumulative in the amount of \$86 for \$1,008.16, as he has testified, on October 28, 1938." [594]

(It was stipulated that the bonds referred to by the witness Taylor had a maturity date of November 1, 1942.)

(It was further stipulated that with respect to the witness Walker, who testified that he did not receive all interest payments on his bonds, that the records of the Company showed that he received all interest on his bonds.)

"Mr. Irwin: Then may I state the amount, because he had not given the amount, and I wanted to recapitulate at this time.

The Court: Yes.

Mr. Irwin: The witness testified, Mr. Walker, that he had a full paid bond in the face principal amount of \$700, and a cumulative non-prior face principal amount of \$113.21; that he sold both of those for \$691.72, and pursuant to the stipulation the books show that he received over the period of time from

the full paid bond the amount of \$231.00 in interest."

(It was thereupon stipulated that defendant's Exhibits "R" and "S" for identification, two documents withdrawn from the file, plaintiff's Exhibit 217 for identification, be received in evidence as part of the cross examination of the witness Dennis S. Taylor.)

(Exhibit "R" is hereinafter set forth and Exhibit "S" is separately certified pursuant to stipulation and order of Court.) [595]

"Mr. Irwin: Reading Defendants' Exhibit  
R:

'January 26th, 1938.

'Mr. Dennis S. Taylor  
6185 Springvale Drive  
Los Angeles, California

Dear Sir:

You hold securities of the First Security Deposit Corporation, Bond A-1350 in the amount of \$1100.00, and A-2423 \$86.06, and we are able at this time to obtain for you \$830.25 on same.

Please present these securities for payment, or if you prefer, take them to your bank, endorse by yourself and Mollie Taylor before witness, and draw a draft on us for this amount through the Dunsmuir and Wilshire Branch of the Bank of America.

You will recall that the First Security Deposit Corporation was organized to



liquidate a large portion of the assets of the old Railway Mutual Building and Loan Association over a period of time to the best advantage of the depositors. It is my understanding had this not been done, the situation would in all probability have been liquidated under a forced liquidation with its incidental low prices by the building and loan commissioner.

Furthermore, I feel that the gentlemen who have had charge of this corporation have done a splendid piece of work in bringing about a condition where we are able to obtain seventy cents on the dollar for the bonds.

In other words, you can obtain \$830.25 for your bonds now, or wait approximately six and one- [596] half years and take your chances on obtaining more out of what is left of the assets after over \$900,000.00 has already been liquidated.

This offer is good until February 15th, 1938.

Yours very truly,

INVESTMENT FINANCE  
COMPANY,

By C. L. CRONK.' '' [597]

“Mr. Campbell: At this time I wish to renew my offer of plaintiff’s Exhibits 180 and 181, which are the letters and the minutes of the stockholders meeting of the Pierce Petroleum Corporation.

Mr. Adams: I had previously made an objection, and I renew the objection at this time on the ground of no foundation laid, not material, hearsay, as to the defendant Twombly.

The Court: The objection will be overruled, exception allowed.

Mr. Irwin: Your Honor, we had interposed an objection. Would the same objection go on the ground of hearsay as to my client, and immateriality?

The Court: That objection will be overruled as to your clients and as to Mr. Lawson's.

Mr. Irwin: Exception."

(Said documents were received in evidence and marked plaintiff's Exhibits 180 and 181.) [598]

"Mr. Campbell: I wish to read these two exhibits into evidence.

Plaintiff's Exhibit 180, a letter dated January 3, 1936, and bearing the reception stamp of the State Corporation Department, 'January 4, 1936.'

'Pierce Petroleum Corporation  
208 Pacific Electric Building  
Los Angeles, California

Gentlemen:

Whereas an agreement was entered into between your company and the Investment Finance Company on November 16, 1935 wherein your corporation agreed not to issue any stock in addition to the five shares theretofore issued without the writ-

ten consent of this organization, and certain escrow instructions were entered into on the same date between your company and this with the same provision contained therein, and

Whereas, we have been advised that you have filed an application with the Department of Investments, Division of Corporations, State of California, for the issuance of 1995 shares of stock to George A. Boedecker, J. H. Edgerton and C. W. Twombly, we wish to advise you at this time that you may consider this letter as our written authority for allowing said stock to issue, and a copy of this letter will be forwarded to the Department of Investments, Division of Corporations, State of California, and to the Western Trust and Savings Bank at Long Beach, California, so that they may have notice thereof.

This shall in no manner change any of the [599] other terms or conditions of the said agreement and the remainder thereof shall subsist and be carried into effect as originally written.

Yours very truly

INVESTMENT FINANCE  
COMPANY

By J. H. EDGERTON

Vice-President.

By C. W. TWOMBLY

Secretary.

We hereby consent to the above.

Pierce Petroleum Corporation

By J. H. Edgerton President.

By C. W. Twombly Secretary.'

Plaintiff's Exhibit 181, minutes of stockholders' meeting.

'Minutes of annual stockholders' meeting of Pierce Petroleum Corporation, Inc., held at the principal office of the corporation, 415 South La Brea Avenue, Los Angeles, California, on February 19, 1937, at 3:30 o'clock p.m.

The following stockholders were present in person:

George A. Boedecker—100 shares.

J. H. Edgerton—200 shares.

C. W. Twombly—100 shares.

Stockholders present by proxy:

Investment Finance Company, a corporation, 5 shares;

The above 405 shares is the total outstanding stock issued by the corporation.'

I will not read the remainder of these minutes. They are signed, 'J. H. Edgerton, President; C. W. Twombly, Secretary.' '' [600]

"Mr. Campbell: Now reading from plaintiff's Exhibit 42, the journal of the Investment Finance Company, reading from page 204 of such journal:

A debit item of \$24,369.80, loss on Pierce Petroleum well No. 1.

‘To clear all accounts connected with Pierce Petroleum Lightburn Community Well No. 1 as oil well equipment and our claim against Pierce Petroleum Corporation sold to B. E. Cockril and J. O. Spelt for \$2,250 cash.’

I will not read the remainder of this item, it not being material.

Mr. Irwin: Did we get a date on that, may it please the Court?

Mr. Campbell: The item is dated December 31, 1939, and is set forth on page 204 of plaintiff's Exhibit 42. The following debit items:

‘Suspense, \$2,250. Reserve for depreciation oil well equipment, \$1,844.44, unearned discount accounts purchased, \$2,653.18, unearned income on service rendered, \$435.18, deposit Signal Hill Water Department, \$150.00. Loss on Pierce Petroleum Well No. 1, \$24,369.80.’ The following credit items:

‘Accounts receivable, Pierce \$2,696.27, oil well equipment, \$10,000; notes receivable, Pierce, \$19,006.33. To clear all accounts connected with Pierce Petroleum Lightburn Community Well No. 1 as oil well equipment and our claims against Pierce Petroleum Corporation sold to B. E. Cockril and J. O. Spelt for \$2,250.00 cash. Deposit consists of \$150.00 deposited



with the [601] Signal Hill Water Department by the Pierce Petroleum Corporation, which is to be withdrawn and refunded to this company on February 15, 1939 as per agreement in file.' '' [602]

Thereupon a motion to strike said minutes read from plaintiff's Exhibit 42 was made and the following proceedings were had in connection therewith. [603]

"Mr. Lawson: The only question—not the only question, but in connection with this particular matter—this has to do with whether or not the operation resulted in a profit or loss. I may be under a misapprehension, but I understood it was limited merely to the contribution of that particular company.

Am I in error in regard to that, or has he opened the gates here now to a question as to whether or not this company operated at a loss or profit, and if it operated at a loss, is that material evidence in this case?

The Court: Well, all he is doing is reading what the books show. Now I think you are entitled, as part of your case, to show what the actual situation was, either that the actual situation was not as shown by the books, or that the entry is misleading.

Mr. Lawson: I don't know whether I made myself clear, but the point I am trying to establish is, is it material in this case as to whether or not the Pierce Petroleum Company turned

out to be a loss or a profit? Are we here charged with not making a profit, that there was a loss sustained on this particular investment? That is the point.

The Court: I have felt, as to most of these corporations A to Z, that it didn't make any difference, under the allegations of the indictment.

Mr. Campbell: If the Court please, the reading of the item is to show, not so much the making of a profit or loss, but simply the history of the transaction and the closing out of the transaction so far as the company is concerned.

In other words, rather than leaving the fact of the investment in the air, it having been a matter determined during the course of the enterprise, I think we are entitled to show what the books reflect historically in regard to that [604] particular investment.

Mr. Lawson: I don't doubt the sincerity of Mr. Campbell's statement, but plain implication to me is the fact that a loss was sustained, and that is emphasized, and we are being penalized because——

The Court (Interrupting): I think there may be something in your position. I think Mr. Campbell's position is also sound. It may be that I should give a special instruction to the jury on it at this time.

Now in order to be sure that the jury have in mind this matter, because we have had so

much discussion, I am going to trouble Mr. Campbell to read that item once more, and then I will make a brief comment about it to the jury.

Mr. Irwin: Your Honor, in reply to Mr. Campbell's statement, before he reads it, he said he did not want to leave the investment in the air. That is my objection. We haven't had the entire history of the investment." [605]

(Thereupon said minutes in plaintiff's Exhibit 42 were again re-read to the Jury.)

"The Court: Gentlemen of the jury, I think I will strike that entire entry just read and instruct you to disregard it entirely, and not to be in any way prejudiced by it. I think, on more mature consideration and on the specific objections being made, it might be misleading, and it might be prejudicial.

Mr. Campbell: If the court please, I wish at this time to read from plaintiff's Exhibit 39, a portion of the books and records of the Investment Finance Company, appearing on page 7 thereof.

Mr. Lawson: I am just wondering if counsel has laid a foundation to show that the loans—these are accounts receivable and apparently are evidence of loans—as to whether or not the defendants had any interest in the company at the time the loans were made. Has the foundation been laid for that?

Mr. Irwin: I was going to say, in that connection I was going to move to strike what

counsel is about to read, since the exhibit is already in evidence, and the only evidence that we have so far is Exhibit 181, which was just read, showing the parties in question, Mr. Twombly and Mr. Edgerton, which your Honor admitted, and which shows they appeared as stockholders in February 1937. Therefore I shall move to strike that exhibit which he proposes to read on the ground that it is immaterial.

Mr. Campbell: I think, if the Court please, this matter was thrashed out the other day, at which time it was stated by the Court that we would be permitted to show the nature of the investments made, and I propose to show these entries as to the making of loans to the Pierce Petroleum Corpora- [606] tion.

The Court: Well, if that is the object, it is to show simply that the Investment Finance Company did make investments in Pierce Petroleum, and then that comes within the terms of the indictment and is admissible.

Mr. Lawson: While your Honor is reading that, I would like to have your Honor have my point in mind, that I understood that it was all predicated upon an interest by the defendants in the Pierce Petroleum at the time that the loans were made. That was my understanding of your Honor's ruling the other day.

The Court: I think this was the basis of my ruling as to these corporations A to Z, which were corporations we so described as being

those in which Investment Finance Company had made a stock investment or to which it had made loans. My statement was that unless there was a showing, a foundation showing, that the directors of Investment Finance controlled those corporations, or possibly under certain circumstances had a heavy personal interest in those corporations, that the only thing we would be interested in here as relevant to the issues involved would be the fact that there was such investment and the general type of corporation in which the investment was made, that where the directors had a controlling interest, that it might be proper to go further in order to give the jury items from which they might pick up intent. I think that was the basis of my ruling.

Mr. Lawson: Yes, your Honor, but I thought it was limited to the time when the control was exercisable and that the loan must have been made at that time. That is if the control or interest was obtained at a time subsequent to the investment, it would be immaterial.

The Court: I think I also went that far and I said that the Government would have to convince me of the connection of [607] where there was an investment to-day and some time subsequently a control was taken over. In other words, if there was a considerable period of time intervening between the two; it might be a perfectly natural development that they



had made an investment and they put men in there to safeguard it.

Mr. Irwin: That is the situation here, your Honor, if you will look at Exhibit 181, which was read a moment ago.

\* \* \* \* \*

Mr. Adams: Your Honor spoke of a matter where there was a long interim from the time the loan was made, and until the time, until anybody representing the Investment Finance Company went into control, or the directors of the Pierce Petroleum, that that could be shown.

Now, this Exhibit No. 181, from which Mr. Campbell read, to which I reserved the right to read, he was reading from the minutes of February 19, 1937, at which time it was shown that Mr. Twombly and Mr. Edgerton had assumed a stock interest.

Now, back in the minutes of 1935——

Mr. Campbell: I don't know what counsel has in mind with reference to the minutes which are not here in evidence.

The Court: I think I understand your point, but that is part of your case, and when the time comes you may put those all in to show the situation. Counsel for the Government is entitled to put in his case as he deems best, as I have indicated many times.

Mr. Adams: I understand that.

The Court: And so long as there is nothing there that seems to the Court to be confusing

or improperly prejudicial, unnecessary, he is entitled to put it in as the books show.

Now, as a part of your case, you may show certain circumstances which take the curse out of that particular piece of evidence. [608]

Mr. Adams: I understand your Honor said that Mr. Campbell could not put in evidence of Companies A to Z unless he would show the time the loan was made. He should show the time the loan was made.

The Court: Pardon me. I just repeated what I said a short time ago. He is entitled to show from the books of the Investment Finance Company, that contrary to the representations made by these men to investors, instead of liquidating, they made investments in these various organizations, and it doesn't make any difference who controlled it.

The point there is not that they were making investments to themselves, directly or indirectly, but that they weren't liquidating, they were investing in oil wells, or banks. You see?

Mr. Adams: Yes.

The Court: He is entitled to show that. You are entitled to explain that, as a part of your case. Now, that has nothing to do with the point alleged in the indictment that they were, in effect, loaning money to themselves.

Now, let me illustrate. I don't know that there is anything of this kind in the entire case, but suppose there was a John Doe Corporation which was owned and controlled by

three of these defendants and they showed that these moneys were loaned to that corporation. They would then be entitled to show the additional fact that these defendants owned that corporation, and that it was a loss. Now, those are items which go to show the intent; they are items of circumstantial evidence. They are items which the jury would be entitled to consider, but before he can go beyond the investment, as shown by the books, he has to lay some foundation to satisfy me before I will let that evidence in that there was a loss, that there was a direct connection between these defendants and that corporation. [609]

Mr. Adams: That is what I think he is not doing. In other words, your Honor said he must do certain things before he can do other things. In other words, he is going at it backwards. He attempted first to show a loss. He is attempting, secondly, to show——

The Court: We took that out. If there was any implication of loss in there I got rid of that. For that reason I didn't think it was proper, but this entry, as I see it, is simply a narrative of the investments of the corporation.

Mr. Adams: Then did he not go backwards in this: He has introduced here the minutes which are two years after the matter he is now going to read, to show that some of these defendants had an interest in this company.

Now, I say that the orderly fashion of proof

was to follow what you said. First, he must show an investment: then if he can show that the defendants were interested he could then show a loss. That is what I understood you to say.

The Court: Let me take those minutes. Will you approach the bench, please."

(The following proceedings were had at the bench outside the presence of the Jury.)

"The Court: This Exhibit 181, which he read, is dated February 19, 1937.

Mr. Adams: Yes.

The Court: Now, let me see that entry there.

Mr. Irwin: December 31, 1935.

Mr. Adams: It is December of '35. There is some 14 months difference, your Honor.

The Court: This says, 'Unearned discount on accounts purchased to set up \$21,000 notes receivable from Pierce Petroleum Corporation, dated 11/16/35 (with interest at 8 per [610] cent from date) to cover indebtedness to Investment Finance Company for \$15,000 cash deposited in trust #1855 with Western Trust and Savings Bank to buy claims of creditors of Pierce Petroleum Corporation—\$1,000 chattel mortgage, L. No. 24 from Charles E. and Maryan A. Kenner—\$1,000 chattel mortgage L. No. 23 from Pierce Petroleum Corporation on equipment—\$1,000 check of Charles E. Kenner returned account insufficient funds (held in cash account in ledger)—services rendered by C. W. Twombly and J. H. Edgerton for Invest-

ment Finance Company, amount of \$435.18 balance credited to Unearned Discount on Accounts Purchased, \$27,616.99.'

Now, I deem that that is simply a reflection of the investment which was made. It shows this investment. Now, that I deem to be proper for that reason. There is nothing there that is confusing. There is nothing there that is prejudicial.

Mr. Irwin: I believe there is, your Honor.

The Court: There is nothing there that would deceive the jury, as I see it.

Mr. Irwin: I believe there is. As I see it, the reason they are putting this one in is the statement was read yesterday about Kenner and his San Quentin record. Now, this is a conclusion. Here it is set up as an asset. This doesn't show the date the loans were made. It refers to the fact that loans had previously been made to pay off those debts. Now they read the final entry setting it up as an accounts receivable. Isn't that true? They are using this description, which is a conclusion, as to what they got for the money they loaned out. That doesn't show the money lent out, and the prejudicial nature is in showing Kenner's figure in there in the light of that statement which was read yesterday.

Again I submit it is misleading. [611]

Mr. Lawson: That was long prior to any transaction of the Pierce Petroleum Company.



\* \* \* \* \*

Mr. Irwin: Does your Honor have this in mind: You stated there are two theories, one that they made loans which are not approved; and the second one, loans in which they had interest. Obviously, this doesn't come inside the loans in which they had interest. This comes under the head of the unwarranted loans, not being under the standards set forth, that is true. Shouldn't we stop by just showing the bare loans instead of reading that description? Instead of reading that description, why not show the loans——

The Court: I don't know what is coming in. You still have your motion to strike. I may take this out yet."

(The following proceedings were had in the hearing of the Jury.)

"Mr. Campbell: Reading now from plaintiff's Exhibit 39, the cash journal of the Investment Finance Company, from page 7 thereof.

'December 17, 1935.

Notes receivable — Pierce Petroleum, debit \$2100; income from service rendered, credit, \$435.18; unearned discount on accounts purchased, credit \$2,564.82; to set up \$21,000 notes receivable from Pierce Petroleum Corporation, dated 11/16/35 (with interest at 8 per cent from date) to cover indebtedness to Investment Finance

Company for \$15,000 cash deposited in trust #1855 with Western Trust and Savings Bank to buy claims of creditors of Pierce Petroleum Corporation — \$1,000 chattel mortgage L No. 24 [612] from Charles E. and Maryan A. Kenner—\$1,000 chattel mortgage L No. 23 from Pierce Petroleum Corporation on equipment—\$1,000 check of Charles E. Kenner returned account insufficient funds (held in cash account in ledger)—services rendered by C. W. Twombly and J. H. Edgerton for Investment Finance Company, amount of \$435.18 balance credited to Unearned Discounts on Accounts Purchased.'

The Court: Now, gentlemen of the jury, you must not connect in your minds this use of the name Kenner with the Kenner name which was in the statement made by Mr. Twombly. There is no proof here of the truth of the statement made by Mr. Twombly, and it wasn't put in, as I explained to you, for any other purpose than to show the condition of Mr. Twombly's mind from which might be indicated an intent so far as he is concerned.

Mr. Adams: Now, with your Honor's permission, I would like to read from plaintiff's Exhibit 181, being the two pages which I understand have now been introduced and being the minutes of the stockholders' meeting:

'Minutes of annual stockholders' meeting

of Pierce Petroleum Corporation, Inc., held at the principal office of the corporation, 415 South La Brea Avenue, Los Angeles, California, on February 19, 1937, at 3:30 o'clock P. M.

The following stockholders were present in person:

George A. Boedecker	—	100 shares
J. H. Edgerton	—	200 shares
C. W. Twombly	—	100 shares'

This is the part he didn't read:

'Stockholders present by proxy:

Investment Finance Company, a corporation, — 5 shares;

The above 405 shares is the total outstanding stock [613] issued by the corporation.

The President asked the Secretary to report on the financial condition of the corporation and the present condition of Lightburn Community No. 1 Well, and the trial balance annexed to these minutes and marked Exhibit "A" was submitted by the Secretary.

A general discussion followed, at which time Mr. Edgerton produced a letter received from the Investment Finance Company, a corporation, and signed by Dr. R. W. Starr, its President, to the effect that payment of the obligation owed by this company to the Investment Finance Company, by virtue of two promissory

notes secured by chattel mortgage dated January 29, 1936, would have to be paid in full immediately, and containing the further information that the said indebtedness was in the amount of \$29,006.33. The letter further stated that no additional funds would be advanced by the Investment Finance Company for the maintenance or operation of Lightburn Community No. 1 Well. The original of this letter is attached hereto, made a part of these minutes, and marked Exhibit "B".

Mr. Edgerton stated that in view of this demand by the Investment Finance Company for payment of its obligation, there was a conflict of interests between this company and the Investment Finance Company, and it would not be feasible for him or Mr. Twombly to serve as directors and officers of both corporations. Mr. Boedecker was requested to suggest the names of additional persons who could satisfactorily act as directors of the Pierce Petroleum Corporation for the ensuing year. [614]

Nominations were thrown open for directors of the corporation, and the following persons were nominated by George A. Boedecker:

George A. Boedecker

Bundy Colwell

Mildred Hargraves.

Upon motion of Mr. Twombly, seconded by Mr. Boedecker, it was unanimously resolved and carried that the stockholders cast a unanimous ballot in favor of the three nominees as directors of the corporation for the ensuing year.

It was suggested by Mr. Edgerton that the new board of directors make every effort to obtain a purchaser for Lightburn Community No. 1 Well, in as much as it was apparent that the Pierce Petroleum Corporation would never be able to repay the amounts owed by it from proceeds derived from the operation of the well.

On motion duly made and carried, the meeting adjourned at the hour of 5:00 o'clock P. M.

(Signed) J. H. EDGERTON,  
President.

C. W. TWOMBLY,  
Secretary.'

Mr. Campbell: Now in view of the reading of those minutes, if the Court please, I at this time wish to renew my offer of the portion of the books of the Investment Finance Company heretofore read and stricken by your Honor.

The Court: I will take that under advisement.

Mr. Campbell: \* \* \* I wish to renew my offer of plaintiff's Exhibit 10, being the application of the Pacific Brick Company, a cor-



poration, for a permit to issue its stock [615] \* \* \* and which bears the signature of the defendant J. Howard Edgerton.

Mr. Butler: I object to it at this time on behalf of the defendant Cronk, that no foundation has been laid, that it is hearsay and immaterial.

Mr. Irwin: I wish to make the same objection, your Honor, and in addition thereto add the one that it doesn't tend to prove or disprove—I think that comes under materiality—any issue, \* \* \*.

Mr. Lawson: I adopt all those objections and add to it that it has not been connected up, and the foundation has not been laid in this sense of the word—not as to the competency, as far as the signature is concerned—but I don't know of anything that has been developed by the Government in this case that has added to the facts which would show and which would come within the limitation or definition of your Honor, nothing in addition in the way of control or stock interest.

The Court: I just went over these minutes, and I am going to permit them over the objection, exception allowed, subject to a motion to strike.

Mr. Lawson: Exception.

Mr. Campbell: This date is June 9, 1937—I beg your pardon. The document is verified on the 27th day of May, 1937. I wish to make the same offer with reference to plaintiff's Ex-

hibit 11, which is the application for amendment to permit.

The Court: The same objections may be deemed to have been made to this, same ruling, same exception. It may be admitted and marked next in order and read to the jury.

(Thereupon said documents referred to were received in evidence and marked respectively plaintiff's Exhibits 10 and 11.) [616]

“Mr. Campbell: I will read these two at this time. Plaintiff's Exhibit No. 10:

‘BEFORE THE DEPARTMENT OF  
INVESTMENT

Division of Corporations  
of the State of California

In the Matter of the Application of Pacific Brick Company, a Corporation, For a Permit Authorizing It to Sell and Issue Its Stock.

State Corporation Department  
Received June 9, 1937.  
Los Angeles Office.

65673 LA

LA 22919

To The Honorable, The Commissioner of  
Corporations of the State of California.

Pursuant to the provisions of the Corporate Securities Act of the State of California, the undersigned, Pacific Brick Com-

pany, a corporation, hereby makes this its application to the Commissioner of Corporations of the State of California for leave to issue and dispose of its securities in the manner hereinafter set forth.

The application of Pacific Brick Company respectfully shows:

That Pacific Brick Company is a corporation duly organized under and existing by virtue of the laws of the State of California, its Articles of Incorporation having been duly filed in the Office of the Secretary of State on the 21st day of May, 1937, as will hereinafter more particularly appear. [617]

## II

(1) That the names, residences and postoffice addresses of the officers and directors of applicant are as follows:

Name	Office	Address
J. Howard Edgerton	President and Director	Los Angeles, Calif.
F. A. Anderson	Vice-president and Director	Los Angeles, Calif.
M. F. Hargraves	Sec'y Treasurer & Director	Los Angeles, Calif.
E. C. Thomas	Director	Los Angeles, Calif.
Vivian Howatt	Director	Los Angeles, Calif.

(2) The location of the principal office of the applicant is 2526 Colorado Avenue, Santa Monica, California.

(3) An itemized account of applicant's financial condition is not annexed as an exhibit to this application, because applicant is a newly organized corporation and has not as yet conducted business and has no tangible assets and only those liabilities incurred as an incident to its incorporation.

(4) The plan upon which applicant proposes to conduct its business is as follows:

To purchase approximately twenty (20) acres of real property located in the City of Santa Monica, County of Los Angeles, State of California, and to take clay therefrom and manufacture common bricks and other clay products, and to distribute and sell the same in accordance with the general practices of brick and tile manufacturing concerns.

(5) Applicant at this time intends to issue common and preferred stock in accordance with the Articles [618] of Incorporation, a copy of the proposed form of the common stock being attached hereto, made a part hereof and marked Exhibit "A", and a copy of the proposed form for the preferred stock being attached hereto, made a part hereof and marked Exhibit "B".

(6) Applicant alleges that no contract is proposed to be entered into concerning the sale of its securities.

(7) Applicant alleges that no pros-

pectus or advertising or other descriptive matter concerning the securities of applicant is to be distributed or published.

(8) Annexed hereto and marked Exhibit "C", is a copy of applicant's Articles of Incorporation, and applicant alleges that same were filed in the office of the Secretary of State on the 21st day of May, 1937, and that since said date no amendment has been made to applicant's Articles of Incorporation, and that they now exist as set forth in Exhibit "C" above referred to.

Applicant further alleges that a certified copy of said Articles was filed in the office of the County Clerk, County of Los Angeles, on the 26th day of May, 1937.

(9) Applicant proposes to issue and dispose of its securities immediately upon issuance of your permit.

(10) Applicant proposes to issue and dispose of 50,000 shares of Common Stock of an aggregate par value of \$50,000, or a par value per share of common stock of one dollar (\$1.00) each. [619]

(11) Applicant proposes to issue and dispose of 50,000 shares of Preferred Stock of an aggregate par value of \$50,000, or a par value per share of preferred stock of one dollar (\$1.00).

(12) Applicant does not propose to pay any commission or compensation for the issuance or disposition of its securities.



(13) A copy of all the minutes of any proceedings of applicant's directors or shareholders, relative to or affecting the issuance of all securities for which permission is hereby petitioned, is hereto annexed and marked Exhibit "D".

(14) Applicant's By-Laws are hereto annexed and marked Exhibit "E", and applicant alleges that same have not been amended.

(15) Applicant does not name a registrar, transfer agent or escrow holder, believing same unnecessary.

### III

That the persons interested in the organization of the applicant corporation, to whom the applicant proposes to sell its stock, are as follows:

E. C. Thomas,  
J. H. Edgerton,  
M. F. Hargraves,  
F. A. Anderson,  
Vivian Howatt,  
A. R. Ireland,  
J. L. Smale,  
R. W. Starr,  
W. S. Brayton,  
William Leffert,  
Harry A. Neyer,  
Ralph Edgington,  
F. E. Jones  
Lloyd R. Massey,

Wherefore, applicant prays that you permit issue, authorizing applicant: [620]

(1) To issue and dispose of 50,000 shares of its common stock of a par value of \$1.00 per share, to the persons named in this application, for a cash consideration of \$1.00 per share.

(2) To issue and dispose of 50,000 shares of its preferred stock of a par value of \$1.00 per share, to the persons named in this application, for a cash consideration of \$1.00 per share.

(3) That said permit be subject to such conditions as you deem desirable and expedient to impose.

Respectfully submitted,  
(Signed) PACIFIC BRICK  
COMPANY,

a corporation,

By J. H. EDGERTON,  
President.

By M. F. HARGRAVES,  
Secretary-Treasurer.

State of California,  
County of Los Angeles—ss.

J. H. Edgerton and M. F. Hargraves, being by me first duly sworn, depose and say: that they are President and Secretary-Treasurer, respectively, of the above entitled corporation; that they have read the foregoing application for permit to issue stock and know the contents thereof; and

that the same is true of their own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters that they believe it to be true.

(Signed) J. H. EDGERTON

M. F. HARGRAVES.

Subscribed and sworn to before me this  
27th day of May, 1937.

ALYCE CROSBY [621]

Notary Public, in and for the County of  
Los Angeles, State of California.'

To which is attached Exhibits, copies of stock certificates, minutes of the first meeting of the Board of Directors of Pacific Brick Company, and By-laws of the Pacific Brick Company.

Reading now plaintiff's Exhibit No. 11:

‘BEFORE THE DEPARTMENT OF  
INVESTMENT

Division of Corporations  
of the State of California

In the Matter of the Application of Pacific Brick Company

For a permit authorizing it to sell and issue its securities.

No. 56573LA

Application For Amendment to Permit to  
Issue and Sell Securities.

State Corporation Department

Received October 22, 1938.

Los Angeles Office.

No. LA 1865.

To The Honorable Commissioner of Cor-  
porations of the State of California:

The application of Pacific Brick Com-  
pany respectfully represents:

I

That on or about the 11th day of Octo-  
ber, 1938, the Honorable Commissioner of  
Corporations issued to the Pacific Brick  
Company his permit authorizing said com-  
pany to sell and issue to any or all of  
the persons named in its application filed  
June 9, 1937, an aggregate of not to ex-  
ceed ten thousand (10,000) of its common  
shares upon the terms and [622] condi-  
tions therein provided.

II

That the Investment Finance Company  
is not named in the application filed on  
or about June 9, 1937, as a person or cor-  
poration to which applicant proposed to  
sell its shares; that applicant now desires  
to sell its shares to Investment Finance  
Company upon the same terms and con-  
ditions that it is authorized to sell its shares

to the persons named in the application of June 9, 1937.

Wherefore, applicant prays that the Honorable Commissioner of Corporations make his order amending his permit of October 11, 1938, so as to authorize applicant to sell its shares to the Investment Finance Company, as well as to the persons named in its application filed June 9, 1937, on the same terms and conditions as authorized in the permit dated October 11, 1938.

Respectfully submitted,  
(Signed) PACIFIC BRICK  
COMPANY,

a corporation,

By J. HOWARD EDGER-  
TON,

Vice-President

By J. W. SEWARD,  
Assistant Secretary.

State of California,  
County of Los Angeles—ss.

J. Howard Edgerton and Joseph W. Seward, being by me first duly sworn, depose and say: That they are Vice-President and Assistant Secretary, respectively, of the above entitled corporation; that they have read the foregoing Application for Amendment to Permit to Issue and Sell Securities and [623] know the contents



thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that they believe it to be true.

(Signed) J. HOWARD EDGERTON

JOSEPH W. SEWARD.

Subscribed and sworn to before me, this 19th day of October, 1938.

(Signed) MILDRED HAR-  
GRAVES

Notary Public, in and for the County of Los Angeles, State of California.

My Commission expires August 20, 1942.' '' [624]

"Mr. Campbell: At this time I wish to renew my offer of plaintiff's Exhibit 12, which is the application for permit to issue stock of the R. F. D. Discount Company, a corporation.

The Court: That was the company whose records have been mislaid?

Mr. Campbell: Yes, your Honor.

The Court: It may be admitted, the objection already having been made, and may be considered to be renewed at this time, and overruled, subject to a motion to strike, and exception allowed.

Mr. Irwin: In addition to the objections that were made at the time of the first offer, may it be understood that the objections that

were made to Exhibit 10 a few minutes ago may be considered to apply to this also?

The Court: The same objections may be deemed to be made, and the same ruling as to all defendants.

Mr. Adams: Your Honor, I don't know whether that includes the objection of no foundation as relating to the defendant Twombly or not.

The Court: Yes, it does.

Mr. Campbell: I make the same offer with regard to plaintiff's Exhibits 13 and 14.

The Court: The same ruling, the same objections, same exception. It will be admitted and marked in regular order.

Mr. Campbell: Thirteen is a supplement to the application of the R. F. D. Discount Company, and 14 is an application for amendment to permit for issuance of stock of that company."

(Thereupon said documents were received in evidence and marked respectively 12, 13, and 14.)

"Mr. Campbell: Now, I will read these three documents [625] at this time.

Plaintiff's Exhibit No. 12—I will state first that this document is dated, or bears the reception stamp of March 3, 1934:

‘BEFORE THE DIVISION OF COR-  
PORATIONS, DEPARTMENT OF IN-  
VESTMENTS, STATE OF  
CALIFORNIA.

In the Matter of

R. F. D. DISCOUNT COMPANY,  
a corporation,  
Applicant.

Application for Permit to Issue Stock.  
State Corporation Department,  
Received March 3, 1934.  
Los Angeles Office.  
58588 LA. LA 9827.

Comes now the above named Applicant,  
and respectfully represented and petitions  
the Honorable Commissioner of Corpora-  
tions of the State of California, as follows:

I.

That the Articles of Incorporation were  
duly and regularly filed with the Secretary  
of State on the 7th day of February, 1934.

II.

The names, residences and post-office ad-  
dresses of its officers are as follows:

Name.	Office.	Address.
H. B. Colwell,	President,	2103 Virginia Road, Los Angeles, Calif.
M. H. Bauer,	Vice- President,	1157 East Broadway, Long Beach, Calif.
M. E. Dickman,	Secretary- Treasurer,	145 Douglas Street, Los Angeles, Calif.

[626]

## III.

The location of its principal office for the transaction of business in the County of Los Angeles, State of California, is: 1017 Rowan Building, 458 South Spring Street, Los Angeles, California.

## IV.

There are no assets and liabilities of the company at the present time, with the exception of the expense of incorporation, including expense for filing Articles of Incorporation and paying necessary license fees, in the sum of \$58.30.

## V.

The corporation does not plan to do an active business of any kind, being organized by a group of ten individuals for the purpose of holding their shares of stock in other groups. The company will probably invest in shares of stock of other corporations from time to time, merely as an investment for its shareholders, or it may purchase real-estate or deeds of trust as an investment for its own shareholders. In

the event that such purchases are made, they will be made in the beginning from cash invested in the company by the shareholders, and future investments will be based entirely upon profits made on the company's own investments.

A copy of the Preorganization Agreement described above and entered into by and between the prospective shareholders herein, is attached hereto, made a part hereof, and marked Exhibit "A".

#### VI.

The shares of common stock of the company [627] shall be issued in form substantially as the form attached hereto and marked Exhibit "B".

#### VII.

A copy of the Articles of Incorporation of the applicant is attached hereto, made a part hereof and marked Exhibit "C".

#### VIII.

The applicant proposes to issue its shares of stock immediately upon receiving the necessary permission from the Commissioner of Corporations

#### IX.

The applicant proposes to issue 75,000 shares of its common stock, said stock to be issued only to the following named in-



dividuals: R. W. Starr, J. L. Smale, E. C. Thomas, A. R. Ireland, William Leffert, A. L. Johnson, W. S. Brayton, F. A. Anderson, C. E. Berry and J. Howard Edgerton, and none of said individuals are to purchase from the corporation in excess of \$7500.00 worth of said stock, the par value of which shall be One Dollar (\$1.00).

The stock shall be issued for the following considerations:

(a) For cash;

(b) For the par value of any shares of guarantee capital stock of The Railway Mutual Building and Loan Association, a corporation, that shall be turned in and exchanged for shares of stock in this corporation by any of the above named ten individuals;

(c) For the par value of any shares of common or preferred stock of the First Security Deposit [628] Corporation, a corporation, that shall be turned in and exchanged for stock of this corporation by any of the above named individuals;

(d) For the par value of any bonds issued by the First Security Deposit Corporation, a corporation, and turned in and exchanged by any of the above named individuals for stock of this corporation;

(4) For services rendered by any one of the above named individuals to the applicant corporation, the amount of shares

to be awarded for said services rendered to be determined by the Board of Directors of this corporation from time to time.

### X.

There shall be no public offering of shares of stock in this corporation for sale, and no stock shall be sold by this corporation to any individual other than the above named ten persons; provided, however, that other persons may be named on the shares of stock in joint tenancy with any one of the above named ten individuals.

### XI.

There shall be no commission or compensation paid for the sale of the shares of stock above mentioned to any one.

### XII.

This application is filed in accordance with the resolution of the Board of Directors of the company at a meeting held at the principal office of the company on the 12th day of February, 1934, at the hour of five o'clock P. M., a true copy of said resolution being attached hereto, made a part hereof, and marked Exhibit "D".

[629]

### XIII.

A true copy of the By-Laws of this corporation is attached hereto, made a part hereof and marked Exhibit "E".

## XIV.

The present officers of this corporation are acting in their capacity on behalf of the prospective shareholders of the corporation, and will conduct the business of the corporation. In view of the fact that no active business is contemplated, the officers have not been chosen because of any particular qualifications for any line of endeavor. In further view of the fact that there is no immediate business enterprise before the company, no particular working capital is necessary. There have been no investments made to date in other companies, and a schedule thereof cannot, therefore, be shown at this time.

## XV.

The reason for the issuance of shares of stock of the corporation to the ten individuals named herein, for a consideration other than cash, is because of the desire on the part of said individuals to pool their various investments and resources in one joint fund, and make real-estate investments, and investments in securities of other companies. It is also because of the desire of the said ten individuals to pool the present voting strength of the shares of stock held by them in The Railway Mutual Building and Loan Association, a corporation, and in the First Security Deposit

Corporation, a corporation. Said ten [630] individuals are close personal friends and business acquaintances of many years standing.

The present acting officers of the corporation are acting in such capacities at no fixed salaries, and with no promised remuneration of the company.

Wherefore, your applicant respectfully requests the Honorable Commissioner of Corporations of the State of California to issue his permit in accordance with the foregoing application.

(Signed) PAUL NOURSE and

J. HOWARD EDGERTON

By J. HOWARD EDGERTON

State of California,

County of Los Angeles—ss.

M. E. Dickman, being first duly sworn, deposes and says: That she is secretary of R. F. D. Discount Company, a corporation, the applicant in the foregoing Application, and makes this verification on behalf of said corporation; that she has read the foregoing Application and knows the contents thereof; that the same is true of her own knowledge, except where therein stated on information or belief, and that as to those matters she believes it to be true.

(Signed) M. E. DICKMAN.

Subscribed and sworn to before me on  
this 1st day of March, 1934.

(Signed) ANN MARQUIS,  
Notary Public in and for the County of  
Los Angeles, State of California.'

Attached thereto is a pre-organization agree-  
ment as follows: [631]

### PREORGANIZATION AGREEMENT.

This Agreement, made at Los Angeles,  
California, this 26th day of January, 1934,  
between the following parties: R. W. Starr,  
J. L. Smale, E. C. Thomas, A. R. Ireland,  
Wm. Leffert, A. L. Johnson, W. S. Bray-  
ton, F. A. Anderson, C. E. Berry and J.  
Howard Edgerton,

### WITNESSETH:

That Whereas, the parties hereto are  
now stockholders and/or bondholders in  
The Railway Mutual Building and Loan  
Association, a corporation, and the First  
Security Deposit Corporation, a corpora-  
tion; and

Whereas, the parties hereto are desirous  
of organizing a corporation, and converting  
their stock and bond investment in the two  
above named corporations into common  
stock in the new corporation,

Now, Therefore, It Is Hereby Mutually  
Covenanted and Agreed by and between the  
parties hereto, as follows:



## I.

A corporation shall forthwith be formed at the expense of all of the above-named individuals under the laws of the State of California, and authorized to issue 75,000 shares of the par value of \$1.00 each, to be known as: R. F. D. Discount Company, and having as one of its objects the acquisition and management of all shares of stock and bonds held by the above-named individuals in the First Security Deposit Corporation, a corporation and/or The Railway Mutual Building & Loan Association, a corporation. [632]

## II.

Subject to the provisions of this agreement, the Articles of Incorporation shall be in such form and contain such provisions as may be advised by J. Howard Edgerton, attorney for the parties hereto.

## III.

None of the shares of the corporation shall be offered for public subscription.

## IV.

Each of the parties hereto shall subscribe for 7500 shares of the corporation, the issuance of which shall be subject to such permit therefor as the corporation may obtain from the Corporation Commissioner of the State of California.

## V.

The corporation shall petition the said Commissioner of Corporations for a permit authorizing the corporation to issue shares to each of the above named individuals, up to the amount of \$7500.00, said shares to be paid for either in cash or exchanged for guarantee capital stock of The Railway Mutual Building and Loan Association, a corporation, or common or preferred stock of the First Security Deposit Corporation, a corporation. In the event that the shares are issued in exchange for the stock or bonds above mentioned, the above named individuals shall be entitled to shares of stock in the new corporation, issued in direct proportion to the par value of their shares of stock or bonds in the other two corporations above mentioned. Provided, however, that common stock in the new corporation shall be issued to the above named individuals [633] in return only for stock or bonds owned by them at the time of the execution of this agreement.

## VI.

The parties hereto agree that the first directors of the new corporation shall be: M. E. Dickman, H. B. Colwell and M. H. Bauer, and that such directors shall not be entitled to any remuneration for their services.

## VII.

After the original issue of common stock to the above named individuals, in return for money or stock and bonds above referred to, the corporation shall then have the power through its Board of Directors to issue stock to the above named individuals for services rendered to the corporation. The amount of stock to be issued in return for said services shall be entirely within the discretion of the Board of Directors of the corporation.

In Witness Whereof the parties hereto have hereunto set their hands this 26th day of January, 1934.

(Signed) R. W. STARR

W. SEWARD BRAYTON

ED C. THOMAS

A. L. JOHNSON

J. L. SMALE

F. A. ANDERSON

C. E. BERRY

A. R. IRELAND

WM. LEFFERT

J. HOWARD EDGERTON.'

[634]

Attached hereto is Exhibit 'D' as follows:

'Whereas, this corporation is authorized in its Articles of Incorporation to issue 75,000 shares of common stock, to be issued and sold at and for the price of \$1.00 per share; and

Whereas, a pre-organization agreement was entered into by and between R. W. Starr, J. L. Smale, E. C. Thomas, A. R. Ireland, Wm. Leffert, A. L. Johnson, W. S. Brayton, F. A. Anderson, C. E. Berry and J. H. Edgerton wherein it was agreed by and between said parties that the corporation when organized should petition the Commissioner of Corporations for a permit authorizing the corporation to issue shares to the above named individuals up to the amount of \$7,500.00 each, said shares to be paid for either in cash or exchanged at par value for guarantee capital stock of The Railway Mutual Building and Loan Association, or at the par value of common or preferred stock, either A or B, of the First Security Deposit Corporation, a corporation, or at the par value of bonds of said First Security Deposit Corporation, or in return for services rendered by the above named individuals to the corporation in an amount to be determined by the Board of Directors of the Company,

Now, Therefore, Be It Resolved: That the secretary of this corporation be and she is hereby authorized and directed to prepare or cause to be prepared, verified and filed, or caused to be filed on behalf of the corporation, an application to the California Commissioner of Corporations for a permit authorizing this corporation to issue

and [635] sell 75,000 shares of its common stock of the par value of \$1.00, at and for the price of \$1.00 per share, to the following named individuals, in an amount not to exceed \$7500.00 in shares to each: R. W. Starr, J. L. Smale, E. C. Thomas, A. R. Ireland, Wm. Leffert, A. L. Johnson, W. S. Brayton, F. A. Anderson, C. E. Berry. and J. Howard Edgerton.'

Also attached hereto is a copy of the By-Laws of the R. F. D. Discount Company, a corporation.

Reading now from plaintiff's Exhibit 13,

'Before the Division of Corporations, Department of Investments, State of California.

In the Matter of R. F. D. Discount Company, a corporation, Applicant.

Supplement to Application for Permit to Issue Stock.'

It bears the stamp 'Received March 22, 1934, State Corporation Department, Los Angeles Office.'

'Comes now the above named Applicant, and respectfully represents and petitions the Honorable Commissioner of Corporations of the State of California, as follows:

# I.

That the Applicant desires to issue stock to the following named individuals, in the



following amounts, and for the following consideration:

Name: W. S. Brayton; number of shares to be issued, 7500; for the following: 780 for 39 shares Class B preferred stock of First Security Deposit Corporation; 6720 for 1344 shares common stock of said corporation.

Name: R. W. Starr; number of shares to be issued, [636] 7500; for the following: 40 for 2 shares Class A preferred stock of First Security Deposit Corporation; 2060 for 103 shares Class B preferred stock of said corporation; 5400 for 1080 shares common stock of said corporation.

Name: A. L. Johnson; number of shares to be issued, 7500; for the following: 682 for Collateral trust bonds of First Security Deposit Corporation; 160 for 8 shares Class A preferred stock of said corporation; 1120 for 26 shares Class B preferred stock of said corporation; 1580 for 316 shares common stock of said corporation; 3958 for cash.

Name: A. R. Ireland; number of shares to be issued, 7500; for the following: 2671 for Collateral trust bonds of First Security Deposit Corporation; 217 for Collateral trust notes of said corporation; 200 for 10 shares Class A preferred stock of said corporation; 3440 for 172 shares Class B preferred stock of said corporation; 860 for

172 shares common stock of said corporation; 112 for cash.

Name: Wm. Leffert; number of shares to be issued, 7500; for the following: 1122 for Collateral trust bonds of First Security Deposit Corporation; 320 for 16 shares Class A preferred stock of said corporation; 2240 for 112 shares Class B preferred stock of said corporation; 580 for 48 shares common stock of said corporation; 3238 for cash.

Name: J. L. Smale; number of shares to be issued, 7500; for the following: 63 for Collateral trust bonds of First Security Deposit Corporation; 1200 for 60 shares Class A preferred stock of said corporation; 1300 for 260 shares common stock of said [637] corporation; 4937 for cash.

Name: J. Howard Edgerton; number of shares to be issued, 7500; for the following: 131 for Collateral trust bonds of First Security Deposit Corporation; 20 for 1 share *Class preferred* stock of said corporation; 520 for Services rendered to this corporation as granted by its Board of Directors; 6829 for cash.

Name. E. C. Thomas; number of shares to be issued, 7500; for the following: 20 for 4 shares common stock of *First Deposit* Corporation; 140 for 7 shares Class A preferred stock of said corporation; 180 for

9 shares Class B preferred stock of said corporation; 7160 for cash.

Name: C. E. Berry; number of shares to be issued, 7500; for the following: 320 for 16 shares Class B preferred stock of First Security Deposit Corporation; 7180 for cash.

Name: F. A. Anderson; number of shares to be issued, 7500; for the following: 670 for Collateral trust bonds of First Security Deposit Corporation; 6810 for cash; 20 for 1 share Class A preferred stock of said corporation.

## II.

That wherever bonds of the First Security Deposit Corporation are mentioned in the above paragraph as consideration for shares of stock to be issued by this corporation, it is meant that shares shall be issued in return for bonds of an equivalent face value.

## III.

That at a special meeting of the Board of [638] Directors of the applicant corporation, held at the principal office of the company, at 5:00 o'clock P. M. on the 16th day of March, 1934, a resolution was duly passed whereby the Board of Directors determined the fair value to the corporation in monetary terms of the various types of consideration to be received for its own

shares of stock. A true copy of said resolution is attached hereto, made a part hereof, and marked Exhibit "A".

#### IV.

That the form to be used for the shares of common stock to be issued by the applicant corporation heretofore filed with the original application herein shall have written somewhere on the face of said certificate the following words:

"All shares of stock issued by this corporation are subject to the restrictions upon transfer as set forth in the Articles of Incorporation."

Wherefore, your Applicant respectfully requests the Honorable Commissioner of Corporations of the State of California, to issue his permit in accordance with the foregoing application and this Supplement thereto.

(Signed) R. F. D. DISCOUNT COMPANY, a corporation,

By M. E. DICKMAN, Secretary.

PAUL NOURSE and

J. HOWARD EDGERTON,

By J. Howard Edgerton

Attorneys for Applicant.'

Sworn to before Ann Marquis, Notary Public, on the 21st day of March, 1934, by M. E. Dickman. [639]

Attached as Exhibit A, the following resolution:

‘Resolved, That Whereas, it is to the best interests of this corporation to receive and hold bonds, preferred stock and common stock, of the First Security Deposit Corporation, in whatever quantities the same can be obtained, and,

Whereas, the organizing stockholders of this corporation have requested this Board of Directors to issue stock in return for various types of consideration,—

Now, Therefore, Be It Resolved: That the following types of consideration shall have the following monetary value:

All collateral trust bonds and notes of the First Security Deposit Company shall have a value to this company in the face amount of that indicated upon said bonds or notes. In other words, they shall be worth par to this corporation.

All preferred stock, both Class A and Class B, of the First Security Deposit Corporation, shall be valued by this company at the sum of \$20.00 per share, which is the par value of said stock.

All common stock of the First Security Deposit Corporation shall be valued at the sum of \$5.00 per share.

Be It Further Resolved, that the Secretary of this company be instructed to file a supplement to the Application heretofore



filed with the Commissioner of Corporations, requesting a permit to issue stock to the following persons, in the following amounts, and for the following considerations:’

Then follows the same names and amounts as set forth in the body of the document.” [640]

“Mr. Campbell: At this time I will read plaintiff’s Exhibit No. 14:

Before the Department of Investment, Division of Corporations—State of California.

File No. 58588 LA

In the Matter of

R. F. D. DISCOUNT COMPANY, a corporation,

Applicant.

APPLICATION FOR AMENDMENT  
TO PERMIT FOR ISSUANCE OF  
STOCK.

State Corporation Department. Received September 21, 1934. Los Angeles Office. LA 11911.

Comes now the applicant company and respectfully represents to the Commissioner of Corporations as follows:

### I.

That on the 23rd day of March, 1934, a permit was granted by the Honorable Com-

missioner of corporations to the applicant company, authorizing it to sell and issue its securities in accordance with its Application and Supplemental Application heretofore filed.

## II.

That on the 3rd day of May, 1934, the applicant company issued its stock to an escrow holder theretofore appointed by the Corporation Commissioner in the names of the respective parties named in the permit, together with other persons as joint tenants; that the stock issued to said other persons as joint tenants was in error and not in accordance with the permit on file herein, and on the 19th day of September the corporation cancelled all stock issued to [641] other persons as joint tenants in violation of the permit, and instructed the secretary to issue new shares of stock to those persons authorized by permission of the Corporation Commissioner herein.

That about said date an audit was made of the corporation books, and the applicant company ascertained that certain stockholders of the corporation had turned in stock belonging to other stockholders, and vice versa in consideration of the shares of the R. F. D. Discount Company, and that it would be necessary for an amendment to the permit to issue stock to be obtained in order to rectify said error.

## III.

That at a special meeting of the Board of Directors of applicant corporation held at the principal office of the company at five o'clock P. M. on the 7th day of September, 1934, a resolution was duly passed, whereby the Board of Directors authorized the secretary of the applicant company to file an application for an amendment to the stock permit authorizing the applicant company to issue stock certificates in accordance with the within application. A copy of said resolution is attached hereto, made a part hereof and marked Exhibit "A".

Wherefore, your applicant respectfully requests the Honorable Commissioner of Corporations to make his order authorizing the applicant company to issue shares of its stock to the following [642] persons, for the following consideration:

Name	Shares	Consideration
A. L. Johnson	1120	56 shares of Class B. preferred stock of First Security Deposit Corporation.
Wm. Leffert	320	64 shares of common stock of said First Security Deposit Corporation.
J. L. Smale	1120	56 shares of Class B preferred stock of First Security Deposit Corporation.

R. W. Starr      920      46 shares of Class A preferred stock of First Security Deposit Corporation.

R. F. D. DISCOUNT COMPANY,  
a corporation.

By H. B. COLWELL      (Signed)  
Secretary

PAUL NOURSE and  
J. HOWARD EDGERTON,  
(Signed) By J. HOWARD EDGERTON,  
Attorneys for Applicant.

State of California,  
County of Los Angeles—ss.

H. B. Colwell, being first duly sworn, deposes and says: That he is secretary of R. F. D. Discount Company, a corporation, applicant herein, and makes this verification on behalf of applicant; that he has read the foregoing Application and knows the contents thereof; that the same is true of his own knowledge, except where therein stated on information or belief, and that as to those matters he believes it to be true.

(Signed)      H. B. COLWELL.

Subscribed and Sworn to before me on this 20th day of September, 1934.

(Signed)      ANN MARQUIS.

Notary Public in and for the County of Los Angeles, State of California.

[Seal]' [643]

Mr. Campbell: At this time I wish to renew my offer as to plaintiff's Exhibit 16, which is a document entitled 'In the Matter of American Building and Investment Company, Application for Permit to Issue and Sell Shares,' bearing the signature of J. Howard Edgerton, and Bundy Colwell.

Mr. Irwin: Might it be understood, your Honor, the same objections as were made to the introduction of Exhibit 10 may be deemed to have been reiterated as to this Exhibit.

The Court: Will you approach the bench in connection with it.

(The following proceedings were had outside the presence of the jury.)

"The Court: So far as this company is concerned can't you enter into an oral stipulation that covers it without putting in all of this.

Mr. Campbell: The situation was simply this, if we can stipulate, that this company had an authorized capitalization and there were issued and outstanding 25,000 shares; and on the date set forth in that document, the Investment Finance Company acquired 17,000 of such shares at the price paid.

Mr. Irwin: I would have no objection to stipulating that that is the fact, but I would interpose the objection of its being immaterial \* \* \* that is a little different situation than some of these others. There are no defendants



individually who have had any stock in that company. I believe that is correct.

Mr. Campbell: There is no personal interest here. \* \* \* The company was organized as set forth in the application, stating that 'Money derived from the sale of stock will be invested in real estate loans, business investments of a general nature and in financing a general insurance agency.' [644]

Mr. Irwin: As I said before, I feel that there being no stock interest held by any one of the defendants, that any evidence as to that company, is objected to on the ground that it is immaterial, and likewise, it is hearsay, but I am not making any point if your Honor overrules the objections. I stipulate that that is what the situation is. I don't feel that that comes within the ruling that the Court has made.

The Court: Well, now, it seems to me they are entitled to show that the Investment Finance Company invested in this company. The name doesn't disclose what its purposes were. Its articles or its application does; and if it can be stipulated, I will permit, at least, that part of it from the articles, or from the application for permit, which indicates what the business of the company was.

The amount of the investment is material. Beyond that I am not interested, and there being no showing that the directors here were involved in it, it is simply under the one matter

alleged in the indictment, namely, that this corporation invested in other than securities which were indicated in its representation.

\* \* \* \* \*

Mr. Campbell: Are all parties willing to stipulate?

Mr. Irwin: Yes, your Honor, may it be understood that we are stipulating but we aren't waiving our objection to that whole line of testimony?

The Court: Certainly not.

Mr. Lawson: As I understand your Honor, it is limited to that part of the indictment that says that they represented that the investments would be legal investments.

The Court: That is the reason it is being permitted to go in evidence. [645]

Mr. Irwin: It is stipulated that those are the facts, over the objection, and a ruling that it is overruled, and exception.

\* \* \* \* \*

Mr. Campbell: I will state what the books of the Investment Finance Company show as to dates, amount of shares acquired, and the price paid, what the books show as to loans and receipts on repayments as to Bond 17. (Bond 17—Dog Food Company.)

The Court: It is stipulated that they were in the business of making dog and cat food.

Mr. Campbell: If we can stipulate to that—you don't want to stipulate as to their financial structure?

The Court: I don't think that makes any difference.

Mr. Irwin: I think that is immaterial under that theory.

Mr. Lawson: As I understand it, it is limited to the point that your Honor stated, the type of investment that was made, which is at variance with the type as represented.

Mr. Campbell: On Bond 17 I will confine myself to the books of the Investment Finance Company.

Mr. Irwin: That stipulation is understood again over exception to the objection of materiality; overruled; and exception, subject to a motion to strike?

The Court: That is right.

Mr. Lawson: That is true as to all defendants.

The Court: Yes."

A similar stipulation was entered into with respect to Pacific Brick and that the books and records of the Pacific Brick Company showed certain issues of shares of stock to certain persons, all subject to the same objections as stated with respect to the American Building and Investment Company, Bond—17 Dog Food Company, and exceptions.

[646]

(The following proceedings were had in the presence of the Jury.)

"Mr. Campbell: I will state each one separately then, if I may.

It is stipulated that on August 12, 1938 the Investment Finance Company subscribed for and bought 17,000 shares of the 25,000 shares originally issued of the American Building and Investment Company, paying therefor the consideration of \$17,000.

With reference to the American Building and Investment Company, it will be further stipulated that, as reflected in its application for permit to issue shares, which application was made to the State Corporation Commission, that the principal business of such corporation is the investment in real estate loans, business investments of a general nature, and in the financing of a general insurance agency.

The Court: May it be so stipulated?"

(To which all Counsel answered "So Stipulated".)

"Mr. Campbell: It will be further stipulated that, with reference to the Pacific Brick Company, that the books and records of the Pacific Brick Company show that on the 20th day of August 1937 Certificate No. 6 was issued to E. C. Thomas in the amount of 500 shares, Certificate No. 7 to R. W. Starr, in the amount of 1,410 shares; and Certificate No. 8, to R. W. Starr, in the same amount; and, further, that as of said date there were outstanding of such company 10,000 shares of capital stock."

(To which all Counsel answered "So Stipulated".)

“Mr. Lawson: Pardon me for interrupting, Mr. Campbell.

Your Honor, don't you think it would be appropriate at this time for counsel to state the purpose of the stipulation, its applicability, in other words? [647]

The Court: Well, the reason which I have announced, gentlemen of the jury, for admitting this evidence into the record is, it seems to me, material on account of the indictment, at least under the allegations which, in effect, say that money of the company was to be invested only in securities which were approved by the Superintendent of Banks or by the State Corporation Department, and that I am permitting this evidence to go as being material to the plaintiff's case in connection with that allegation of the indictment.

Mr. Campbell: Now first I will ask, it will be stipulated that the Bond 17 Dog Food Company is a company engaged in the manufacture and sale of pet food, is that correct?

Mr. Irwin: It is now and at the outset was intended as such a company. I think that should be stated. That was the purpose of its incorporation.

Mr. Campbell: Yes. I will so amend my statement.

May it be stipulated to?

The Court: May it be so stipulated, gentlemen?"



(To which all Counsel answered "So Stipulated".)

"Mr. Campbell: I will read first the date of acquisition, the number of shares, and the consideration paid:

February 1, 1938, 7,000 shares, \$7,000.

April 5, 1938, 1,000 shares, price paid, \$1,000.

April 8, 1938, 2,500 shares, price paid, \$2,500.

April 16, 1938, 1,000 shares, price paid, \$1,000.

April 22, 1938, 5,000 shares, price paid, \$5,000.

May 3, 1938, 400 shares, price paid, \$400.

May 10, 1938, 435 shares, price paid, \$435.

May 12, 1938, 2,000 shares, price paid, \$2,000.

May 27, 1938, 100 shares, price paid, \$100.

August 2, 1938, 13,000 shares, price paid, \$6,500.

August 24, 1938, 8,000 shares, price paid, \$4,000.

August 25, 1938, 8,000 shares, price paid, \$4,000. [648]

August 26, 1938, 8,000 shares, price paid, \$4,000.

August 26, 1938, 2,000 shares, price paid, \$1,000.

August 29, 1938, 6,000 shares, price paid, \$3,000.

August 29, 1938, second acquisition, 4,000 shares, price paid, \$2,000.

August 31, 1938, 6,341 shares, price paid, \$1,000.

January 24, 1938, 14,266 shares, price paid, \$891.17.

Total shares, 89,042, total price paid, \$45,826.17.

The books reflect the following loans to and repayment from the Bond 17 Dog Food Company:

May 10, 1938, loaned \$565.

May 20, 1938, loaned \$1,000.

May 23, 1938, loaned \$500.

May 24, 1938, loaned \$1,000.

May 24, 1938, loaned \$500.

May 27, 1938, loaned \$1,000.

May 31, 1938, loaned \$1,000.

June 2, 1938, loaned \$4,000.

June 15, 1938, loaned \$6,000.

July 8, 1938, repaid \$2,000.

July 4, 1938, loaned \$2,000.

July 5, 1938, loaned \$2,000.

July 21, 1938, loaned \$435.

July 26, 1938, loaned \$1,000.

August 25, 1938, repaid \$4,000.

August 26, 1938, repaid \$4,000.

August 26, 1938, credit of \$1,000 by adjustment.

August 29, 1938, repaid \$4,000.

August 30, 1938, repaid \$5,000.

August 31, 1938, repaid \$1,000.

September 26, 1938, loaned \$2,000.

September 29, 1938, repaid \$1,000.

October 4, 1938, loaned \$1,000. [649]

The following items are all loans so I will not repeat the statement each time:

October 7, 1938, \$1,000.

October 14, 1938, \$1,000.

October 24, 1938, \$500.

October 28, 1938, \$500.

November 1, 1938, \$1,000.

November 9, 1938, \$1,000.

November 9, 1938, \$500.

November 15, 1938, \$500.

November 17, 1938, \$500.

November 19, 1938, \$500.

November 22, 1938, \$500.

November 29, 1938, \$2,000.

December 8, 1938, \$2,000.

December 23, 1938, \$500.

December 27, 1938, \$1,000.

January 4, 1939, \$1,000.

January 14, 1939, \$1,500.

January 19, 1939, \$2,000.

January 24, 1939, \$200.

January 25, 1939, \$6,000.

February 1, 1939, \$1,000.

February 3, 1939, \$1,000.

February 8, 1939, \$1,000.

February 17, 1939, \$2,000.

March 1, 1939, \$1,000.  
March 11, 1939, \$2,000.  
March 18, 1939, \$1,000.  
March 27, 1939, \$1,000.  
April 4, 1939, \$1,000.  
April 6, 1939, \$1,000. [650]  
April 12, 1939, \$2,000.  
April 14, 1939, \$1,100.  
April 24, 1939, \$1,000.

Total loans, \$63,800, repayments, \$22,000, balance, \$41,800 transferred to notes receivable.

The following are notes receivable commencing with the first item, which said amount was transferred from open account into a notes receivable as of May 1, 1939, \$41,800.

May 2, 1939, \$1,000.  
May 12, 1939, \$1,000.  
May 18, 1939, \$2,000.  
May 25, 1939, \$1,000.  
June 5, 1939, \$2,000.  
June 19, 1939, \$1,000.  
June 22, 1939, \$1,000.  
July 10, 1939, \$1,000.  
August 30, 1939, \$2,000.  
October 14, 1939, \$1,500.  
October 20, 1939, \$1,000.  
November 6, 1939, \$2,500.  
January 15, 1940, \$1,000.  
January 31, 1940, \$500.  
February 15, 1940, \$500.  
March 6, 1940, \$1,100.

March 12, 1940, \$500.

April 8, 1940, \$500.

April 19, 1940, \$1,000.

June 26, 1940, \$500.

July 9, 1940, \$500.

August 8, 1940, \$250.

Total notes receivable, \$65,150, repayments not shown. Now might it be stipulated, pursuant to our statement [651] here at the bench, that subject to correction, those are the items set forth upon the books of the Investment Finance Company?

Mr. Irwin: As of the dates given.

Mr. Campbell: As of the dates given.

The Court: May it be so stipulated?"

(To which all Counsel answered, "So Stipulated".)

Mr. Campbell: May it be further stipulated that the books and records of the Investment Finance Company disclose that as of the 28th day of July, 1938, Investment Finance Company acquired 16,106 shares of the Pacific Brick Company, for which said shares a consideration of \$13,313.49 was paid; that as of August 5, 1938, it acquired 5,000 shares, for which consideration of \$5,000 was paid, making a total number of shares 21,106, amount paid for it \$18,313.49.

Mr. Irwin: I may have missed it, if counsel will give me the first figure and state what that was with reference to the total outstanding.



Mr. Campbell: As of August 5, 1938, there were outstanding 45,000 shares of capital stock of the Pacific Brick Company.

Now, I wonder, with that addendum, if the present stipulation may be accepted. Then I will proceed.

The Court: Is that satisfactory?

Mr. Lawson: Yes.

Mr. Irwin: Yes.

Mr. Butler: Yes.

Mr. Adams: Yes.

The Court: It is so stipulated. Proceed."

(To which all Counsel answered, "So Stipulated.")

"Mr. Campbell: The plaintiff will further stipulate the records of the Bond 17 Dog Food Company, and the American [652] Building and Investment Company do not disclose stock ownership at any time on the part of any of these defendants.

Mr. Lawson: I object to the word 'disclose' in connection with that. I think the stipulation is broader, that there is no evidence. It is stipulated they had no interest. That is the effect of it.

The Court: It may be that they did, but that is all the plaintiff can stipulate to. You stipulate that that is what the records show. The records don't disclose any interest.

Presumably they haven't any, and they haven't any unless the plaintiff proves they have. But so far as the stipulation is con-

cerned, the wording is all right, and the jury are to consider, unless the plaintiff proves they had some, that they didn't have any. \* \* \*

The Court: The records don't show that they have any. I think the wording is correct.

Mr. Campbell: I stated that the Government will stipulate that the records of the Bond 17 Dog Food Company, and of the American Building and Investment Company do not disclose any stock ownership at any time on the part of any of these defendants.

Mr. Irwin: Acceptable, your Honor.

The Court: It may be so stipulated, then.

Mr. Irwin: Might we make the same query except as to the other defendants than the Pacific Brick? In other words, as your Honor will recall, there were certain other unnamed defendants. Might we have the same declarations?

The Court: May it be stipulated that other than as disclosed by reading from the records, that the records do not disclose any stock interest in the Pacific Brick other than as previously indicated?

Mr. Campbell: Yes, your Honor. I so stipulate." [653]

(Thereupon the following plaintiff's Exhibits were read to the Jury.)

"Plaintiff's Exhibit 153, being a letter on the letterhead of the American National Bank of St. Joseph, Missouri, dated July 19, 1938.

This letter is addressed to the

‘First Security Deposit Corporation,  
415 S. La Brea Avenue,  
Los Angeles, Calif.

Gentlemen:

One of our customers holds one of your Cumulative Collateral Trust Bonds, Series A, No. A-6721 for \$854.20 and Certificate A 934 for 11 shares of your Class “A” Preferred stock. She has been informed that the corporation is in process of liquidation and has had an offer for the securities.

Will you please advise us if your corporation is liquidating, and if so, should the bond and certificate be sent in, or disposed of in any way. If she should sell the securities on the market at the present time, can you tell us about what she should receive for them.

Yours very truly,

GEORGE E. RICHMOND,  
Vice President.’

The next one, being plaintiff’s Exhibit No. 155, on the letter head of the First Security Deposit Corporation, dated August 3, 1938.

[654]

‘Mr. George U. Richmond  
Vice President  
American National Bank  
St. Joseph, Missouri

Dear Sir:

Re your letter of July 19th, 1938, concerning our securities.

This corporation is conducting a process of liquidation in as orderly a manner as is possible; the bulk of its assets consisting of trust deeds acquired during the inflationary period of the late nineteen twenties, and of real estate acquired through foreclosure of such trust deeds. The present governmentally sponsored lending efforts make competition pretty difficult for this type of assets.

It is the aim of the company to complete its liquidation as expeditiously as possible. As to whether its security holders should retain, or dispose, or their securities, this company has no advice to offer one way or the other, as the final outcome entirely depends upon future economic conditions, and as to these it is certain that no present prognostication will be of any great value.

We understand the market on these securities at the present time to be in the

neighborhood of 75% of the face on the bonds and 10% on the par of the stock.

Yours very truly,

FIRST SECURITY DEPOSIT  
CORP.

By C. W. TWOMBLY.'

Plaintiff's Exhibit No. 36, and specifically reading a [655] portion of the minutes of June 24th, the minutes rather, of the special meeting of the Board of Directors of the Investment Finance Company of June 24, 1937.

'The following Directors were present:

Messrs. R. W. Starr

J. H. Edgerton

E. C. Thomas

The following Directors were absent:

Messrs. J. L. Smale

C. W. Twombly.

On motion of Mr. Thomas, seconded by Dr. Starr, a resolution was unanimously passed authorizing and directing Mr. Edgerton to employ Mr. Charles T. Cronk at a salary of \$200.00 per month, plus a reasonable automobile expense for this purpose.'

Now, I should have read the former paragraph. This will be backwards.

"A discussion was had as to the advisability of employing a man for the purpose of contacting outstanding bondholders



of the First Security Deposit Corporation in an effort to ascertain the advisability of liquidating the complete bond issue prior to its maturity in 1942.'

Then the other paragraph that I read. I don't care to read any more of it.

\* \* \* \* \*

"Mr. Adams: I wish to read from Government's Exhibit No. 36, minutes of regular meeting of the Board of Directors, Investment Finance Company, as of Date August 17, 1938.

'The following Directors were present:

Messrs. R. W. Starr

E. C. Thomas [656]

J. L. Smale

A. R. Ireland

C. W. Twombly.'

I am reading from the fifth paragraph, at the bottom of the first page of those minutes:

'On motion of Mr. Twombly, seconded by Mr. Smale, and carried, Mr. Twombly voting "No," it was resolved that Mr. Cronk's employment be extended upon the same terms and conditions for the period of one month.'

Mr. Lawson: Will it be stipulated that Mr. Twombly signed the minutes and prepared them?

Mr. Adams: Reading from plaintiff's Exhibit 36, as of date September 21, 1938, reading

from the minutes of the regular meeting of the Board of Directors of the Investment Finance Company held on that day.

‘The following Directors were present:

Messrs. R. W. Starr

E. C. Thomas

J. L. Smale

A. R. Ireland

C. W. Twombly.’

I am reading from the paragraph, being the last paragraph on the first page of those minutes.

‘On motion of Mr. Thomas, seconded by Mr. Smale, and carried, Mr. Twombly voting “No,” it was resolved that Mr. Cronk’s employment be extended upon the same terms and conditions for the period of one month.’

Same stipulation, if Mr. Lawson wishes it, that he was present at the meeting; acted as secretary thereof; and signed the minutes as such secretary.” [657]

“Mr. Adams: The next one I wish to read from is October 19th, reading from plaintiff’s Exhibit 36, minutes of the regular meeting of the Board of Directors of the Investment Finance Company, as of date October 19, 1938.

“The following Directors were present:

Messrs. R. W. Starr  
C. W. Twombly  
A. R. Ireland  
E. C. Thomas  
J. L. Smale

In addition to the Directors  
Mr. J. H. Edgerton, and  
Miss Florence Long  
were present.’

I am reading from the second from the bottom paragraph on the first page thereof.

‘On motion of Mr. Thomas, seconded by Mr. Smale, and carried, Mr. Twombly voting “No,” it was resolved that Mr. Cronk’s employment be extended upon the same terms and conditions to and including November 16, 1938, unless terminated sooner by himself.’

Mr. Twombly was present at that meeting, but the minutes are signed by Florence Long, as secretary.

Mr. Campbell: I wish to read a few more minutes—I am reading from plaintiff’s Exhibit 36, meeting of May 25th, 1938:

‘The following directors were present:

Messrs. R. W. Starr  
E. C. Thomas  
J. L. Smale  
A. R. Ireland  
C. W. Twombly.’ [658]

Reading in part:

‘On motion of Mr. Twombly, seconded by Mr. Ireland, and carried, it was resolved that Mr. Cronk’s employment be extended to June 1, 1938.’

Minutes signed ‘R. W. Starr, Chairman; C. W. Twombly, Secretary.’

Meeting of June 1, 1938.

‘The following directors were present:

Messrs. R. W. Starr  
E. C. Thomas  
J. L. Smale  
A. R. Ireland  
C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton and Mr. C. L. Cronk were present.’

Reading in part:

‘On motion of Mr. Smale, seconded by Mr. Ireland, and carried, it was resolved that Mr. Cronk’s employment be extended for two weeks.’

Minutes signed ‘R. W. Starr, Chairman, C. W. Twombly, Secretary.’

Minutes of June 15, 1938:

‘The following directors were present:

Messrs. R. W. Starr

E. C. Thomas

J. L. Smale

A. R. Ireland

C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton was present.'

Reading in part:

'On motion of Mr. Thomas, seconded by Mr. Smale, [659] and carried, Mr. Cronk's employment was extended until the next regular directors' meeting.

On motion of Mr. Ireland, seconded by Mr. Twombly, and carried, it was resolved that Mr. Cronk be paid at the rate of \$75 per month for automobile expense.'

Minutes are signed 'R. W. Starr, Chairman; C. W. Twombly, Secretary.'

Minutes of July 20, 1938:

'The following Directors were present:

Messrs. R. W. Starr

E. C. Thomas

J. L. Smale

A. R. Ireland

C. W. Twombly.

In addition to the directors, Mr. J. H. Edgerton was present.'

Reading in part:

'On motion of Mr. Thomas, seconded by



Mr. Smale, and carried, it was resolved that Mr. Cronk's employment be extended for the period of one month.' Signed, 'R. W. Starr, Chairman; C. W. Twombly, Secretary.' "

(Thereupon the Plaintiff rested its case in chief.) [660]

"Mr. Irwin: May it please the court, on behalf of the defendants Starr, Thomas and Smale, individually, I respectfully move Your Honor to strike all of the evidence heretofore received, which would be from Exhibit 1 to, I believe, it is 218, Your Honor.

On the grounds that no *prima facie* showing has been laid as to the scheme charged in the indictment with reference to the first fourteen counts.

I respectfully move this Honorable Court, with reference to Count 15, which is the conspiracy count, that overt acts 1 to 41 be stricken on the grounds that no *corpus delicti* has been laid to show the existence of the conspiracy charged in the indictment; or that if such a conspiracy did exist, the association therewith, with knowledge, and with the intent to further the purpose charged in the indictment, on the part of either defendants, Dr. Starr, Smale or Thomas, has not been shown.

Here is where I am coming to the classes. With reference to the motion to strike on hearsay, I will have to particularize that somewhat, not too much, because here is the way I feel,

that the law will fall on that: With reference to such letters as may have been written, for example, by the defendants Cronk or Twombly, if the court should hold that there was a scheme, and that my clients, with knowledge of that scheme, and the intent to participate, both the knowledge and the intent having to exist at the time the scheme was alleged to have been formed, that then whether they knew about the letters or not, the objection of hearsay would not stand, because they would be responsible for the acts done in furtherance thereof.

I thoroughly recognize that principle. Now, likewise, and there will be another motion with reference to the grounds of hearsay, and that it has not been connected up [661] to those documents which have been introduced, which are signed by third persons, and which have been introduced either on the theory to show intent, or on the theory of showing similar actions or transactions, but where it is not shown it was done by anyone on behalf of, or who was a party to the scheme, then there is a distinction there with reference to the hearsay.

With that preamble, your Honor, I particularly move the Court to strike the indictment letters—Exhibit 161, which refers to Count 1.

I move to strike Exhibit 156, which is Count 2.

Count 3, the Government has indicated that

they moved and will thereafter move to dismiss that count.

- Exhibit 158, which is Count 4;
- Exhibit 159, which is Count 5;
- Exhibit 168, which is Count 6;
- Exhibit 151, which is Count 7;
- Exhibit 161, which is Count 8;
- Exhibit 162, which is Count 9;
- Exhibit 155, which is Count 10;
- Exhibit 163, which is Count 11;
- Exhibit 164, which is Count 12;
- Exhibit 165, which is Count 13;
- Exhibit 166, which is Count 14.

Your Honor, the motion to strike the exhibits to which I have just particularly referred is based upon the fact that they were admitted over objection of materiality, that the corpus delicti had not been laid, and that they were hearsay as to my clients, the Defendants Starr, Thomas, and Smale, and were admitted with the promise that they would be connected up.

In support of that motion I hope to point out to your [662] Honor that that responsibility has not been fulfilled by the plaintiff in that in addition to the grounds that no scheme has been shown to have existed, as charged in the indictment, that there is in addition thereto, that there is not one iota of testimony to show that either the Defendant Starr, Smale or Thomas, at the time the scheme is alleged to have been performed, had any knowledge of such a scheme, nor did they do any act with

the intent of participating in such scheme, or furthering its accomplishment.”

\* \* \* \* \*

“The Court: As I understand the indictment, it was in the initial stages, after the preliminaries, that prior to the dates upon which the count letters were placed, or caused to be placed in envelopes, with prepaid postage, and so forth, that prior to that time these defendants had devised and intended to devise a scheme to defraud certain persons, and to obtain money or property from them and others, unknown, and to obtain money from investors in the Railway Building and Loan who had theretofore converted their investments into securities of the First Security; and that they had devised, and intended to devise the scheme to obtain this money by means of false and fraudulent promises, and representations, and pretenses; and then it goes on after that to show the way the scheme and artifice was carried on.

Mr. Irwin: Yes, your Honor, I subscribe to that. That is why I asked your Honor to bear in mind ‘by means of false and fraudulent pretenses, representations, and promises,’ that they were going to defraud these people.

What I am going to take up in a moment, with the Court’s permission, is find in the indictment a starting place where [663] the scheme, having been formed, it is alleged that they started doing things in furtherance of the

scheme; in other words, when you do something in furtherance of a matter, you already have the matter itself in mind that you are going to further. That, I believe, is a fair statement.

So that when we come to that point, we then will find within the indictment that the scheme charged is alleged to have been then in existence, and that the matters subsequently done were in pursuance and in furtherance of the scheme,

\* \* \* the indictment, it charges this scheme to defraud and take money and property of the investors was formed the date not later than November 1, 1932; that the scheme was then in existence.

If I am correct on that premise, the law is clear that all the elements of the crime must be present. That includes, your Honor, not only must the scheme charged in the indictment be present, but likewise the defendants who are accused of being party to that scheme must be shown that they had knowledge of the scheme, and that they agreed to, or by their acts, may be said to have agreed and intended to participate in the scheme.

The Court: Just let me see if I understand that. So far, the allegation of the indictment is that prior to the time of the mailing out of any count letter, the earliest count letter was mailed on June 22, 1938.

Now, you say that the allegations of the indictment are such that the scheme or devise to defraud must have been entered into before the



first day of November, 1932, which is the date, as I remember it, that the indictment alleges that the First Security issued its bonds and stocks in exchange for the Railway Building and Loan securities.

Mr. Irwin: That is right, your Honor. [664]

The Court:

Is the gravamen of the offense the issuance of the securities by the Railway Building and Loan, or is the gravamen of the offense the scheme and the execution of the scheme to acquire from divers and certain and sundry persons the securities which had been previously issued? In other words, the date of November 1, 1932 is only of interest to us in that the Government could not put in any evidence of any action so far as the execution of the crime is concerned prior to that date, because the foundation wasn't in existence until that date because the securities weren't issued."

\* \* \* \* \*

"I disagree with counsel Irwin, and I see no basis in the indictment for the statement that the scheme could not be originated—must have originated not later than November 1st.

I don't think that date is very material. It seems to me that under the indictment the scheme might have originated at almost any date. The time of the origination of that scheme is an indefinite matters, which will have to be determined by the jury from the facts



as they find them. There could have been no execution of that scheme, manifestly, until the securities which formed the basis for the carrying out of the fraud were in existence, and that date is November 1, 1932, as I understand the indictment.

Now, it seems to me that that scheme could have originated at any time, but it couldn't have been carried out actually by any acts on the parts of the conspirators, carried out, until after two things had occurred: One, the securities of the Railway Building and Loan had been issued, and, two, those securities had been converted by the investors from Railway Building and Loan into First [665] Security Deposit Corporation.

Now, I disagree with counsel Irwin on another element. I understand the law to be that the jury is entitled to take all of the items of evidence which are properly introduced by the Government, and admitted by the court, into a count in determining whether or not, as to the substantive offenses, that there was a scheme to defraud by the use of the mails; and, as to the conspiracy count, as to whether or not there was the conspiracy alleged.

I believe that the jury is entitled to determine, from subsequent acts, which are items of circumstantial evidence, what had taken place in their judgment prior to that time".

\* \* \* \* \*

"Mr. Irwin: \* \* \* I took the top of Page 4,

\* \* \* the allegation 'that thereafter and for the purpose of, and pursuant to the said scheme and artifice, to defraud the said persons intended to be defrauded, and on or about the 28th day of December, 1936'. All right, there is that date.

Now, sub-section 1: 'That thereafter and for the purpose of'—

Funk and Wagnall's dictionary on 'purpose'—it might seem idle, but so that I can give my thought to your Honor—'purpose' is given this definition:

'An idea or ideal kept before the mind as an end, effort or action.'

And the second choice given to the definition:

'The particular thing to be affected or attained.'

Now, then, with the word 'pursuant'. Your Honor is familiar with it, but I have used it idly for many years, but I wanted to get that clearly in my mind so Your Honor would understand what I have before me.

'Pursuant' is in accordance with—now, therefore, Your Honor, I submit, with the reading of that allegation, [666] that obviously our scheme, and our artifice to defraud, was prior to December, 1936.

Now, why do I say then that I go back to December, 1932? That would be Your Honor's question.

\* \* \* \* \*

Now, what do we have then between November 1, 1932, and this December, 1936?

We have, if Your Honor will follow with me, 'That thereafter, and on or about the 7th day of February, 1934, the defendants did organize and cause to be organized R. F. D. Discount Company, Inc.'—that is Page 3, Line 20.

That is no pretense. I think we can be in accord that there is nothing there that said that they did that. They didn't say there was anything fraudulent about it, so that doesn't help us.

And the next thing they say is, 'That thereafter and on or about the 30th day of August, 1935' they caused to be organized Investment Finance Company.

That is not a pretense. It is not a representation to anybody, one way or the other. It doesn't come within that, and that doesn't help us, does it, as to the means?

The point I am making, going back again, 'by means of false and fraudulent pretenses.' So that doesn't help us.

The Court: It doesn't help you so far as the false representations are concerned.

Mr. Irwin: Let me go on and see if I can hit the conclusion that I am coming to.

Therefore, we are up to that point. Now, why do I go back to November, 1932? Taking, if we will, Page 5, the top paragraph, Your Honor, beginning with Line 1, 'That the defendants would and did represent to the per-

sons [667] intended to be defrauded, that the First Security Deposit Corporation would and did loan and advance money only upon security or properties theretofore approved.'

That is where I believe I get my help.

Now, first of all, I want to call this point to Your Honor's attention, which may help to clear some of the fog that is before us all. If we read Line 3, 'that the First Security Deposit Corporation would and did loan'—that they represented that they would and did loan—we know whoever drew the indictment was not familiar with what the evidence would show. \* \* \*

What evidence do we have with reference to the fact that the loans would be made only as approved by the corporation commissioner or the bank commissioner? When did it happen? It happens back when they are soliciting the investors of the Railway Mutual Building and Loan to come in to the reorganization scheme. They didn't represent—and Your Honor will recall the testimony—there was no representation that they would, and were loaning, which is what 'would and did loan' means—there was no representation there that they would and were loaning only on securities approved by the Corporation Commissioner, but the evidence was, and is before Your Honor, that in the application, as I recall it, to the Commissioner some place in there, \* \* \* that the representation was made that they would only loan money that was approved.

Now, that allegation there we can strike out. Whoever drew that allegation did not have his evidence in mind, because at that time the corporation, the Railway Mutual Building and Loan, was threatened with going under. There is no evidence at all that they were making any loans, the Railway Mutual. The Security Deposit certainly wasn't mak- [668] ing any loans, because in November 15, 1932, they issued their securities. It wasn't until the latter part of '33 that they got their segregation of assets through, and it appears from the evidence, letters introduced by the plaintiff, that between November, 1932, and up until the segregation was completed, \* \* \* that the First Security was dependent for its revenue upon the prorata share of returns to the Railway Mutual Building and Loan.

Therefore, Your Honor, that allegation, as I say, we can disregard as surplusage. I illustrated, though, to show that whoever drew the indictment didn't have in mind what the evidence would show, and let it read, 'that they represented to the persons intended to be defrauded'—coming back with how the scheme was to be carried out—'they represented to the persons to be defrauded that the corporation would loan money' only upon security.

Now, I state to Your Honor that that is a representation, and that, according to the evidence, was made prior to November 15, 1932—I mean November 1, 1932.



Another one: All the evidence that has been admitted here on the question of loans.

Now, again, why do I say that that is prior to November, 1932?

The Court: Before you go on to your next point, let me see if I understand this one.

Mr. Irwin: Very well.

The Court: Before I take on the next one.

I will put this in entirely different language, and simplify it, and see if I get your point.

Your point is, in essence, this: That the indictment charges that there was a scheme or artifice or a conspiracy to defraud by certain means, and that one of the means was [669] the organization of certain corporations, A, B and C, at least one of which would not be permitted to invest money in other than securities approved by the Division of Corporations, or by the Superintendent of Banks of the State of California; that it is alleged that the things were done in furtherance of the scheme so that naturally the scheme must have antedated the means. The only item of evidence in the entire record of the investment limitations in the original literature which was sent out asking that there be an exchange of securities in the Railway Building and Loan into the securities of the First Deposit Corporation, a fortiori, the scheme must have originated prior, at least, to the 1st day of November, 1932.

Have I stated your argument correctly?



Mr. Irwin: With this particular addition, Your Honor, which I was coming to——

The Court: (Interrupting) I only mean so far.

Mr. Irwin: As far as I have gone.

Mr. Campbell: I think the evidence shows that this representation was made throughout. If Your Honor will refer to the letters which were sent out, there was repeated time after time that the business was being conducted—I can't remember the exact words offhand—but that the business was being conducted pursuant to that plan and agreement, and references appear here, which I will point out subsequently—I don't take the time to do it now, but reiterating through inference or through reference that particular representation.

I thought I should call that to Your Honor's attention in view of counsel's statement.

Mr. Irwin: And I believe counsel will find himself in error, because I recall those letters, Your Honor, [670] and I believe counsel is confused. There is another representation altogether, that they represented in 1938 that they were a liquidating corporation.

I am referring now to the one that they would loan money on property only approved by the Corporation Commissioner and the State Superintendent of Banks. The original plan, as a matter of fact, says that it will be legal investments—another indication that they would loan money only on legal investments.

The Court: Well, now, the same thing has been bothering me a little, and I would like to have pointed out to me, before we finish this argument, specifically in the evidence where that representation was made, to what we have described in the vernacular as the defraudees. In order to prove the allegations of the indictment, the representation must be made to the defraudees, either directly or indirectly, to either attention, or intended to come to their attention.

Now, other than in the plan itself, where are there——

Mr. Irwin: Very well. \* \* \* on our November, 1932, date, is found in the indictment on Page 2, commencing with Line 29, 'that thereafter'—now, remember that up above they said that they had the scheme, and so on—'that thereafter, and for the pretended and alleged purpose of liquidating the assets of the said Mutual Building and Loan Association, and to protect the stockholders, and security-holders thereof, the said defendants induced said persons to *be intended* to be defrauded to exchange their securities in the said Railway Mutual Building and Loan Association for securities issued by said First Security Deposit Corporation.'

Your Honor, I submit in that paragraph, if nothing else that has been said by me to Your Honor, is a substan- [671] tiation of my statement that the scheme as alleged is

alleged to have existed on November 1, 1932, and that what happened thereafter, representations, and so forth, were means used to carry out that scheme.

Why do I say that, Your Honor? Because what does the word 'pretended and alleged' mean, but that it is false, and misleading. What does this allegation mean, 'that the defendants induced the persons intended to be defrauded'? By that you mean they had their intent, they already had their plan, and what other conclusion is there by that allegation but that they induced the persons intended to be defrauded—is there any other conclusion but that at that time the indictment charges there was a scheme, and thereby to defraud those persons of their property.

We are in accord—I notice the court nodded his head with me—that it certainly was before December 28, 1936, when there is the pursuance of the allegation.

Now, I believe that on this Paragraph 2—and I invite your Honor's very serious consideration, because it is the thing that has bothered me about this case from the time I first got into it—I submit that they charged one scheme, and we have been trying another one.

To elaborate: What we have been trying, your Honor, is the scheme—and what I urged before this trial ever started as to what would happen—we are trying a scheme where these

defendants are not charged but are shown in 1936 and 1935 to have taken over the Investment Finance, and from that time manipulated the affairs of the Investment Finance by loans and what not.

\* \* \* if I may recapitulate—that the indictment positively shows that the scheme is alleged to have been [672] conceived and formed prior to December, 1936, which is the pursuant business.

Number two, that it is respectfully submitted that the representations about that they would make loans approved by the Commissioner of Corporations, that only refers to prior to the organization date of November, 1932, because I recall—and I will be glad to have counsel show any evidence hitting that allegation—I don't want him to be confused now about the ones that they later made, where they were carrying out a liquidating business—and then the clincher, for the alleged purpose and pretended purpose of liquidating the defendants induced the persons intended to be defrauded to exchange their securities—the exchange of securities is shown to have been completed on November 1, 1932.

\* \* \* I recall the letter that went out to the Railway Mutual referring to the fact that the plan was open to inspection up in the office, I believe, in the Rowan Building or the Pacific Electric Building, inviting them up to

look at it. I don't believe that the exhibit—which I will get for Your Honor—I don't believe there is anything said in it as to what the investments would be in the letter.

Mr. Lawson: You may make that statement.

Mr. Irwin: I am assured that I can make that statement fairly."

"The Court: \* \* \* the motion to strike as made must be denied and exception allowed. \* \* \*

Now, as I say, this taking out, or attempting to take out, the bottom from the plaintiff's case has been very well done by counsel. I think it has been beautifully presented. It may be that some other court would agree with [673] counsel. I just don't happen to, but that is just counsel's and the defendants' hard luck, but we did that so if I did agree with them we wouldn't need to sit around here for several days in arguing because I would set the defendants free tonight if I agreed with them.

Now, the motions to strike on other grounds as to particular exhibits, as to particular parts of the testimony, may proceed. I will ask counsel to reduce those pretty much to writing so that we may proceed very rapidly."

\* \* \* \* \*

"Mr. Lawson: Your Honor, if you will indulge me just for a moment, not that I like to hear the sound of my voice, but I think



that this places me in a rather awkward position with regard to the motion to strike on behalf of my clients.

Now, I am going to, as I indicated, of course, adopt all of the argument and the points of Mr. Irwin. There will be some supplemental remarks connected with his argument that I want to add to it, and then I do want to take a little time to emphasize what I consider as the most important points.

I think that there are certain documents here in evidence that are very important to the case, and I am not going to spend very much time on anything except what I consider the real danger points. *I* wouldn't take me very long.

I will, over the week-end, boil everything down so that I will have it ready to deliver to your Honor in concentrated form, but the exhibits are all here, and I would like to have the privilege of arguing orally the motion to strike on behalf of my clients."

"The Court: No, I can't take the time for that. \* \* \* Now, I will put the same requirement on all you gentlemen, to [674] make the rest of your motions and your arguments, your points, your authorities, and everything, in writing, and get them to me by 3:00 o'clock on Monday. \* \* \*

"Mr. Lawson: I don't like to be insistent, but I do want to make this further statement.

I will say that, frankly, I do not think I will have the time available, consistent with the other duties in connection with the preparation of the defense, to follow the procedure as suggested by your Honor.

I would like to accomodate your Honor in that respect, but I do not think that I can do it as effectively as I could by oral argument.

The Court: That is going to be your tough luck, because I will not take the time of all these counsel to listen to any more oral argument."

"Mr. Lawson: Your Honor, I am going to really request that I be given that opportunity because——

The Court: I will have to deny it. I am sorry.

Mr. Lawson: I wish to take an exception.

The Court: Yes.

Mr. Irwin: Might I, in this connection——

The Court: You were given an opportunity to add to it today. You said that you had nothing to add to the argument.

Mr. Lawson: In regard to that one point, your Honor, and I do not intend to cover that one point, of course. I concluded on that point, but there are other things in this record that I could refer to in the documents, that I could explain to your Honor, and get the benefit of your Honor's reaction the same as you have given your reaction to the argument of Mr. Irwin on this point, particularly with

reference to the report of Mr. Dean Campbell, and [675] the statement of Mr. Twombly.

I will say this, your Honor, we have been in trial now for four weeks, and there is an accumulation of testimony, and I have had to try this case in a form that I have not been accustomed to: That everything has been reserved on a motion to strike; and it makes it a little bit difficult, and I don't believe that I should be restricted in any sense of the word as to how I should protect the interests of my client.

If I may respectfully state to the court, as to what the plan, the best plan, the court would think should be followed, I think that the defendants here are entitled to insist upon this procedure, if, in their judgment, they think it is the proper one to follow.

The Court: I am sorry. I happen to be in charge of this court."

\* \* \* \* \*

Mr. Lawson: I will say, your Honor, that it isn't because of any other business outside of this case. There is much to be done in the preparation of the defense."

\* \* \* \* \*

"Mr. Lawson: If your Honor is referring to me, I don't care to make a speech, and that isn't what I have in mind at all, but I am just simply calling your Honor's attention to it, that if this case had been tried, as I have been

accustomed, as ordinarily tried, when a document is presented you get up and you object, and you state the grounds of your objection; you have the document before you, and the matter is passed upon at that time.

The Court: Have I declined to pass on any?

Mr. Lawson: I am not criticizing your Honor. I am just simply stating it from my standpoint. It isn't a [676] question of not being willing to write out objections, but the particular documents that I have in mind, and the points, I want to be here with the documents, and read from them and point out in particular the objectionable parts. In other words, to have the same opportunity to point out to your Honor the objectionable part of those documents as I would have had if the objection had been passed upon in the usual manner."

\* \* \* \* \*

"The Court: There are two ways of ruling on objections: You can tell the plaintiff to put them in, and limit them to a particular person, and then the Government will be required to make them applicable to all. I have never followed that policy. I have followed the other policy in every one of these conspiracy cases that I have had."

\* \* \* \* \*

The Court: Now, I have ruled on the pending motions, which were adopted by Mr. Lawson. I ruled on those. Those are through. Now,

if Mr. Lawson thinks that he should have some additional matters in connection with those motions already made, he may start out his written document by any arguments, calling my attention to any documents that he wishes in that connection, in order that he may supplement Mr. Irwin's reply to Mr. Campbell.

Mr. Lawson: Your Honor, I don't know if the record shows that the motion is formally made on behalf of the Defendants Edgerton and Ireland. So as to make it certain, it will be understood by your Honor that the motion to strike evidence on behalf of the Defendants Edgerton and Ireland is made on the same grounds, the same specifications, and for the same reasons, and upon the same argument as stated by Mr. Irwin in his motion with reference to his plans. [667]

The Court: It is all in the record.

Mr. Lawson: I just wanted to make certain.

And then whatever additional argument is to be in writing, is to be supplemental in addition to whatever points Mr. Irwin has brought out.

The Court: Yes." [678]

Thereafter the following motion was filed on behalf of the defendants Ireland and Edgerton: